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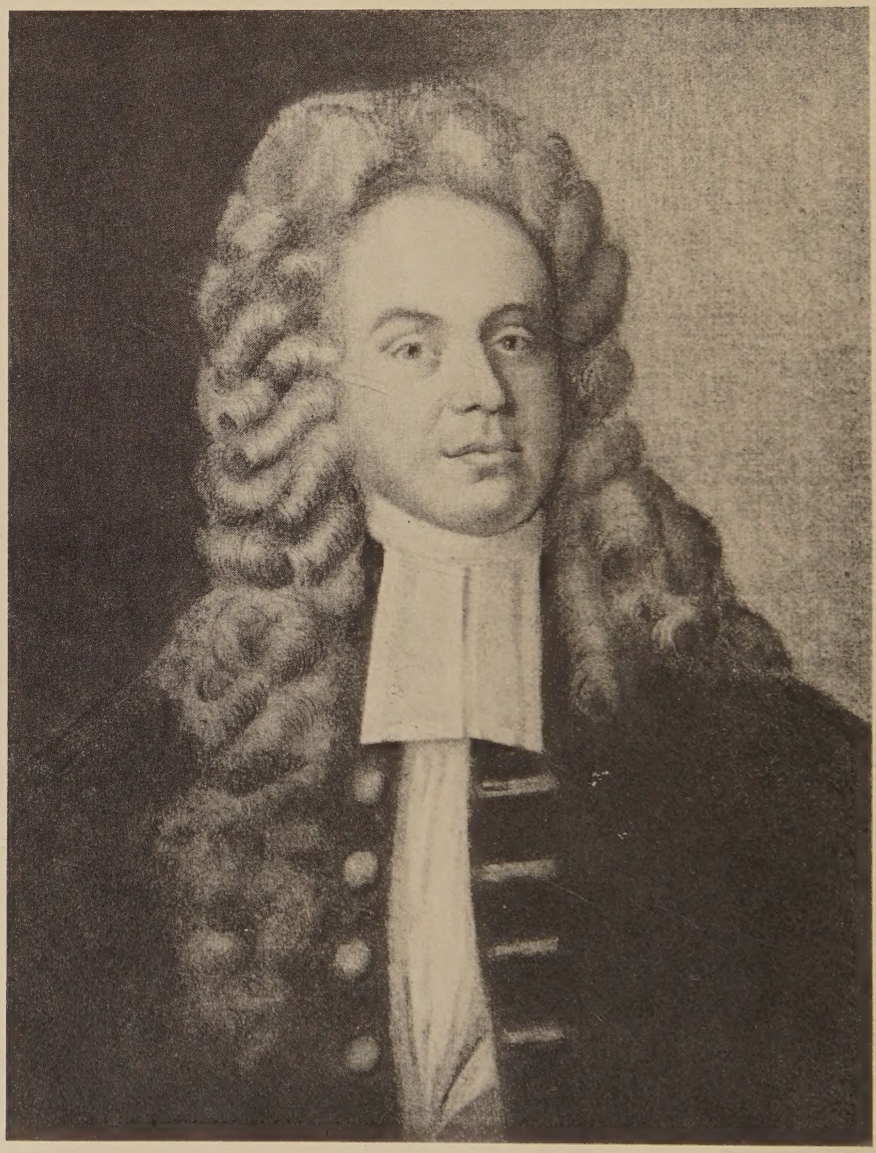

ANDREW HAMILTON

John Peter Zenger

His Press, His Trial

AND

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BY

LIVINGSTON RUTHERFURD

ALSO

A Reprint of the First Edition of the Trial

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PUBLISHER'S NOTE

The Publishers make grateful acknowledgment to the New York Public Library for permission to copy the portraits of Rip Van Dam and Lewis Morris and to make use of its valuable collection of Zenger imprints; to the Pennsylvania Historical Society for permission to copy the portrait of Andrew Hamilton, reproduced as frontispiece; and to other persons and public libraries for their assistance in the preparation of the bibliography of the issues of the Zenger Press

PREFACE

HILE the events herein related are, perhaps, not as generally known as they should be, nevertheless, constituting as they do the earliest warning of the coming Revolution, they are of interest and importance in the study of the development of the Nation.

The editor wishes to state that he is under great obligations to the late Paul Leicester Ford for the loan of Charles R. Hildeburn's notes, which form the basis of the Bibliography of the different Zenger presses, and to Miss Robinson, of the American Antiquarian Society; Mr. Eames, of the New York Public Library, and Mr. Kelby, of the New York Historical Society.

The following abbreviations have been used in the Bibliography:

B.M. British Museum.

B.P.L. Boston Public Library.

C.E.N. Charles Eliot Norton, Cambridge, Mass.

C.H.S. Connecticut Historical Society.

E.D.C. E. Dwight Church, New York.

H.S.P. Historical Society of Pennyslvania.

L. New York Public Library, Lenox Collection.

L.C.P. Library Company of Philadelphia.

H.U. Harvard University.

N.J.H.S. New Jersey Historical Society.

N.J.S.L. New Jersey State Library.

N.Y.H.S. New York Historical Society.

N.Y.S.L. New York State Library.

W.N. William Nelson, Paterson, N. J.

Ed. Editor.

No effort has been made to locate all known copies.

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ACCOUNT OF POLITICAL CONDITIONS, ZENGER'S PRESS AND TRIAL

CHAPTER I

POLITICAL CONDITIONS—GOVERNOR COSBY'S ARRIVAL —HIS INCREASING UNPOPULARITY

AFTER the English occupation of New York, in 1664, the inhabitants of the colony found themselves oppressed by a government that was arbitrary and despotic in its character. Grants of revenue were made generally for the use of the Crown, the revenues were disbursed by the governors, practically as they saw fit, and the people could not compel them to account. The governor was vested with power to convene and dissolve the Assembly at pleasure, and was given an absolute negative on the acts of the Assembly. The fiscal officer was the receiver-general, who was responsible only to his superiors in London. The salaries of royal governors and judges were fixed, and so long as they were promptly received these officials paid but little attention to the needs of the people and the development of the Colony.

The people, through their Assemblies, demanded that this state of affairs be radically changed. They

asked that revenue grants should be limited to specific purposes only; that the money levied should be confided to an officer responsible to the legislature; that the revenue should be granted from year to year, and that the salaries of governors and judges should be dependent annually upon popular contentment. These proposed changes constituted a great invasion of the prerogatives of the Crown, and were long and stubbornly resisted both by the governors and the colonial authorities in London. The people just as stubbornly insisted upon acquiescence in their demands, as they saw in this legislation their only safeguard against the avaricious character of the men appointed to govern the country, and the form of government which they administered.

The contest thus early commenced continued throughout the colonial period, and as the same questions came up for settlement in the other colonies the country gradually became united in its demands, and the spirit of the people grew bolder, until finally the unjust measures of Parliament were more than sufficient to kindle the long smoldering fires of revolt into the blaze of open rebellion.

The period covered by the administration of William Cosby as governor, from 1732 to 1736, was marked by a series of arbitrary acts which nearly produced a revolution, and which developed a hostility of political feeling almost as bitter as any which our generation has experienced. The oppressions culminated in the trial of John Peter Zenger, which was one of the most stirring incidents of colonial days. Its results were of greater magnitude than any

of the participants could have imagined. It established the freedom of the press in North America, it wrought an important change in the law of libel, and marked the beginning of a new era in popular government. It came about under the following circumstances.

On the death of Governor John Montgomerie on the first day of July, 1731, after an uneventful administration of about three years, Rip Van Dam as senior councillor, according to a well-established custom, succeeded to the office of governor until the arrival of the new appointee. Van Dam was a member of an old Dutch family, and was born in Albany about 1662. He was bred to the sea and made a voyage to Jamaica in 1686. For many years he carried on a shipyard with his partner, James Mills, in the rear of Trinity Church, and was interested in several vessels. In 1690 he was one of the petitioners for relief from the arbitrary measures of Leisler. He was Assistant Alderman from 1693 to 1696, and was commissioned a member of King's Council in 1702 under Governor Cornbury, and held the office for thirty-three years. He was appointed a master in Chancery in 1711, and again in 1720. He married in 1684 Sara Vanderspeigel, and died June 10, 1749. He was the last native of New York of Dutch extraction who presided at Council under English rule, and to his Dutch blood may be attributed the pertinacity which he displayed in his contest with Governor Cosby. Smith, the historian, says, "Van Dam was an eminent merchant of a fair estate, though distinguished more for the integrity

of his heart than for his capacity to hold the reins of government." He performed the duties of governor for thirteen months, and his administration, though short, was peaceful and popular. At the close of his term warrants were passed by Council giving him the salary and fees of the office received during the period of his incumbency.

William Cosby, the new governor, was the tenth son of Alexander Cosby of Stradbally Hall, Queens County, Ireland. He had been Equerry to the Queen, and was Colonel of the Royal Irish Regiment, and retained his rank when he received his appointment as governor. He arrived in New York on the first day of August, 1732, on His Majesty's Ship, "Seaford." James Alexander had previously written Cadwallader Colden about him, saying:

"Our Doubts about our Governor are now Resolved, Coll. Cosby having kist the King's hand for New York and New Jersey in January Last, and has sent his private Secretary and some other servants to prepare the house and all things for him. The Governor was to Sail the tenth of this month, and proposes to be here in May. He is a man about 45 and gay—has the Earl of Halifax's Sister for his wife, 2 daughters almost women and a son."

Cosby wrote to Van Dam about this time, saying: "I shall be much obliged to you if you give Orders that care be taken of the Garden, and proper things be sow'n in for the Season; and care also be taken of Nutton Island and the Game preserved."

Cosby probably owed his appointment to the influence of the Duke of Newcastle. He had not

long before been removed from the governorship of the Island of Minorca, where he had made himself intensely unpopular by his appropriation of the revenues, and where he had become involved in serious litigation by his arbitrary confiscation of the property of a Spanish merchant, made prior to a declaration of war between England and Spain. He sold part of the property and retained the proceeds, secreted the papers in the case and denied the injured merchant the right of appeal. He was a man of limited education; he lacked prudence and intelligence, and did not distinguish between power and right. He was avaricious, and his only idea of diplomacy was superior force. His disposition was haughty and pompous, and he was possessed of a violent temper, over which he exercised little or no control.

In colonial days the arrival of a governor was a most important event; he was the direct representative of the King, his influence and authority were all-powerful, and the prosperity of the people was directly dependent upon his policy. We can, therefore, understand the anxiety with which the people awaited Cosby's coming, especially as they had heard rumors of his maladministration at Minorca. Yet he was warmly welcomed. The Boston Weekly News Letter says:

"On Tuesday last his Excellency WILLIAM COSBY, Esq; Governour of this Province, arrived at Sandy Hook in his Majesty's Ship Seaford, Capt. Long, Commander, in seven Weeks from Great Britain, and landed here about 10 o'Clock, in the evening, and was received at the Waterside by several Gentlemen, who attended

him to the Fort. The next Day between the Hours of 11 & 12 his Excellency walked to the City Hall, (a Company of Halbertiers & a Troop of Horse marching before, and the Gentlemen of this Majesty's Council, the Corporation, and a great number of Gentlemen and Merchants of this City following, the Streets being lin'd on each side with the Militia) where his Commission was published, and then his Excellency returned (attended as before) to the Fort. The Militia then drew up on the Parade and saluted him with three Vollies."

The Assembly met and voted him a salary of fifteen hundred pounds and gave him a gratuity of seven hundred and fifty pounds for his alleged services in procuring the repeal of a sugar bill which was considered detrimental to the interest of the middle colonies.

The affairs of the Colony were peaceful and the people hoped for a quiet administration. But they were soon disappointed. When Cosby was told by Lewis Morris, Chief Justice of the Supreme Court, about his present from the Assembly, he became angered at the smallness of the gift and shouted violently, " Damn them, why didn't they add the shillings and pence? Do they think I came here for money? I'll show them."

The Assembly afterwards raised the amount to one thousand pounds. This incident showed the real character of the man, for it seems extremely doubtful whether he contributed in any way to the repeal of the bill, and by the King's instructions he was forbidden to take any presents whatsoever from the Assembly.

Within a short time after his arrival Governor Cosby produced a royal order dated May 31, 1732,

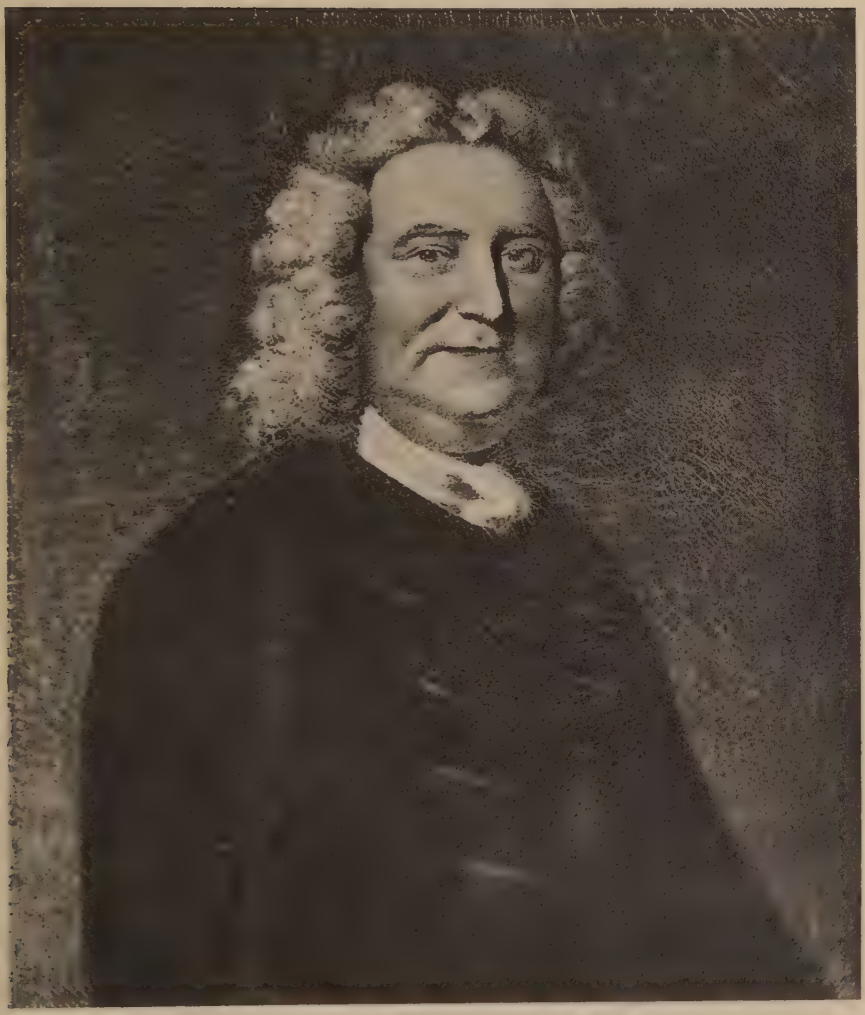
which gave him one-half of the salary, perquisites and emoluments of the office from the time of his appointment until he arrived in America. He served a copy on Van Dam, who conceived he had a right to retain what he had collected, and at first refused to pay over anything unless compelled by due course of law. It was alleged by Van Dam that the salary and perquisites annexed to such an office passed with the office, and that the person on whom, by law, the burden of the office was laid, was entitled to its benefits. The people considered the order a piece of favoritism in behalf of a royal appointee against a native of the Colony, and their sympathies were immediately aroused in favor of Van Dam.

Later, Van Dam expressed his willingness to comply with the order provided that Cosby would account for what he had received, alleging that Cosby had collected some six thousand pounds more than had come into his hands, and really owed him three thousand pounds. Cosby declined to accept this proposition, and Van Dam retained what he had collected. Cosby then determined to sue, but he was puzzled to know just how to proceed. The matter was one of account and could not be brought in the Supreme Court, as it possessed no equity jurisdiction. He could not sue in Chancery as he himself was chancellor, while a suit at common law would admit of a set-off by Van Dam, and he was afraid lest a jury would render a popular verdict against him. Cosby, therefore, by an ordinance dated December 4, 1732, attempted to give the Judges of the Supreme Court authority to hear causes as Barons of the Ex-

chequer, and directed Richard Bradley, the Attorney-General, to bring an action there in the King's name, although Cosby was the person beneficially interested in the result. The people had always been most firmly opposed to the erection of a court of Equity without consent in general Assembly, and former assemblies had in 1702, 1708, 1711 and 1727 passed resolutions condemning in the strongest terms the erection of such a court. Therefore, the passing of this ordinance merely to serve the purpose of an avaricious governor, became at once the basis of union for the opposition to Cosby's administration.

The proceedings which followed are interesting not only as leading directly to the trial of Zenger, but from the prominence of the persons connected with them.

Lewis Morris, who was Chief Justice of the Supreme Court, was a son of Richard Morris of Morrisania, and one of the most distinguished men of his time. He was born in 1671, and early entered upon an active public career. He represented the Borough of Westchester in the Assembly from 1711 to 1738, or twenty-seven years, a much longer period than any other citizen has ever been returned to that body by his constituents. He was a member of Council from 1721 to 1729, Boundary Commissioner in 1723 and Chief Justice of the Supreme Court from 1715 to 1733, Judge of the Court of Admiralty for nearly fifteen years and Governor of New Jersey from 1738 to 1746. He was a man of great intellectual power, bold and fearless in his manner, and his temper, though hasty, was well con-



JAMES ALEXANDER

trolled. He married, in 1691, Isabella, daughter of James Graham, who was Attorney General and a member of Council. Their many descendants have always been prominent in state and national affairs for their ability and patriotism.

James Delancey, second justice of the Supreme Court, born in 1703, was a son of Etienne DeLancey and Anna Van Cortlandt. He was appointed a member of Council in 1729 on the death of his uncle, John Barbarie, and held office for twenty-four years. He was Chief Justice of the Supreme Court from his appointment in 1733 until his death, Lieutenant Governor in 1753, and Governor in 1755. He was a man of education and ability, and his arbitrary rulings in the Van Dam and Zenger cases can scarcely be reconciled with his subsequent conduct as Governor, except on the score of the most bitter partisanship.

Frederick Philipse, third justice, also held his position from his appointment for the remainder of his life. He was born in Barbadoes and married a daughter of Anthony Brockholst. He died in 1751. He is said to have been a worthy gentleman of plentiful fortune, "though with no pretensions to learning of any kind."

James Alexander, counsel for Van Dam and later for Zenger, was born in Scotland in 1691, and came to New York in 1715, where he began the study of the law. By his industry and application he soon rose to a high place in the profession. He was Attorney General in 1721, and member of Council from 1721 to 1737, and from 1750 to 1756. He

was elected to the Assembly in 1737, and was a member of Council for New Jersey from 1722 until his death. He was one of the founders of the American Philosophical Society and was prominently connected with every public enterprise of his day. Smith says, "Though no speaker, he was at the head of his profession in sagacity and penetration, and in the application of business no man could surpass him."

He was a man of great depth of mind, and boldly espoused the side of the people in their fight against Cosby. Though he was well known as a man of ability and integrity in both New York and New Jersey, yet Cosby wrote the London Board of Trade urging his removal from Council, saying, "He is very obnoxious to most in the Council as well as to every honest man in both Provinces having the character of a very tricking dishonest man, and therefore very unfit to sit in King's Council."

William Smith, also counsel for Van Dam and Zenger, was born in England in 1697, and it is said that he came to New York in the same ship with Alexander. He too became prominent in the profession of the law as a man of talent and integrity. He was appointed Recorder September 30, 1736, and one of the incorporators of Princeton College in 1746. He was appointed Attorney General in 1751, member of Council from 1753 to 1767, and Justice of the Supreme Court from 1763 to 1769.

Richard Bradley, the Attorney General, was appointed in 1723, and held office until his death in 1752. But he early fell under the displeasure of the Assembly, as they considered "he was in the habit

of filing informations on his own notion with a view rather to squeeze money from those he prosecuted than from any just cause."

When the action was commenced by the Attorney General, Van Dam was advised by his counsel, Alexander and Smith, to bring suit against Cosby for the half of what Cosby had received over and above the amount collected by Van Dam. But, to his astonishment, the clerk of the court refused to affix a seal to the summons, and Cosby would not answer the declaration. Accordingly, Van Dam was put on his defense in Cosby's action and his counsel, by way of plea, offered the following exceptions to the being and jurisdiction of the court:

"1*st*. For that (Your Honours being applyed to as Justices of the supream Court) the supream Court was erected and established by Ordinance, in the Time of His late Majesty King *George* the first, and in His Name, and that that Ordinance expired by His Death, at least before exhibiting this Bill; and that there has been no Ordinance or other Act or Thing done, in the present King's Time, to re-establish that Court; and therefore no such Court now existing.

2*dly*. For that His present Majesty, by His Commission to Governour *Montgomerie*, under the great Seal of *Great Britain*, having commanded him to execute all Things in due Manner, according to the Powers granted by that Commission, and the Instructions therewith given; and by the 39*th* of these Instructions, His Majesty having required the said Governour *Montgomerie* to *grant Commissions, with the*

Advice of the Council, to Persons fit to be Judges in this Province, as by the Instructions proffered; and yet the said Governour granted Your Honours Commissions, without such Advice; and therefore not pursuant to the Authority aforesaid; And it's put to Your Honours Judgment, Whether, after Knowledge of this Defect, You will take upon You the Power of judging in this Cause?

3*dly*. For that the Defendant says, Your Honours have not any Authority or Jurisdiction to compel the Defendant to answer upon Oath, touching the Matters in the Bill: And that there is no Prescription, Act of Parliament, nor Act of Assembly, to establish any supream Court, nor to impower any Court or Person to hold Cognizance of Pleas, in a Course of Equity, in or for this Province: And therefore pray Your Honours Opinion, whether the Defendant ought to be compelled to answer you in a Course of Equity."

It was further alleged that it was the business of an equity court to grant relief where it could not be had by common law, and not to deprive the subject of the right to trial by jury; and that the King was not a person interested in the proceeding, having by his order given his interest in the salary and fees to the Governor.

Rule to argue the plea was filed February 1st, 1733, and the argument was set down for April 9th, 1733. Lewis Morris, at the opening of the court, delivered a long and exhaustive opinion against its jurisdiction in equity causes, and then left the bench, declining to have anything further to do with the

case. The closing sentence of his opinion was as follows:

"And as I take it the giving of a new Jurisdiction in Equity by Letters Patent to an old Court, that never had such Jurisdiction before, or Erecting a new Court of Equity by Letters Patent or Ordinance of the Governor and Council, without Assent of the Legislature, are equally unlawful, and not a sufficient Warrant to justify this Court to proceed in a Course of Equity. And therefore by the Grace of God, I, as chief Justice of this Province, shall not pay any Obedience to them in that Point."

Cosby was intensely angered by the opinion and wrote Morris a savage letter, impugning his integrity and demanding a copy of what he had said in court. Morris sent him a copy, together with a letter, a part of which reads as follows:

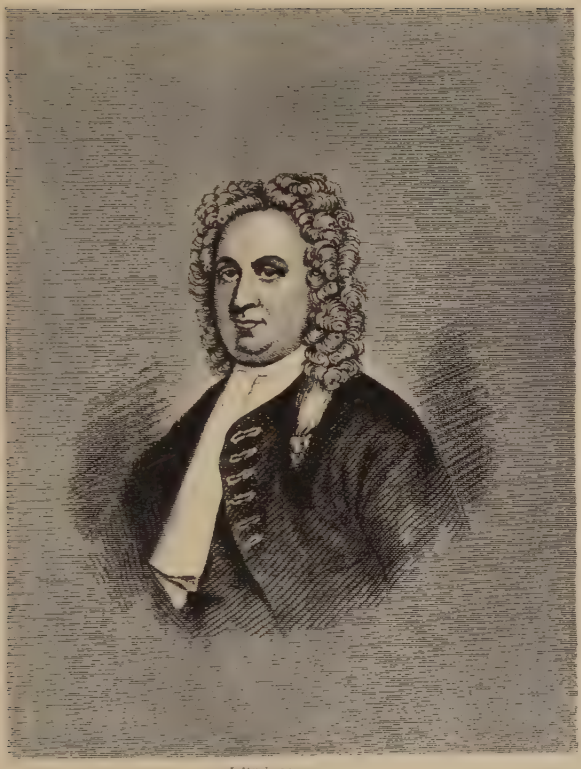
"As to my Integrity, I have given You no Occasion to call it in Question. I have been in this Office almost twenty years, my Hands were never foul'd with a Bribe; nor am I conscious to myself, that Power or Poverty hath been able to induce me to be partial in the Favour of either of them. And as I have no Reason to expect any Favour from you, so am I neither afraid nor ashamed to stand the Test of the strictest inquiry you can make concerning my Conduct. I have served the Public faithfully and honestly, according to the best of my Knowledge; and I dare and do appeale to them for my Justification."

He was then summarily removed from his office without the advice of Council, although he had served for nearly eighteen years without complaint.

His opinion was published and ran through two editions. In the following August DeLancey was commissioned Chief Justice and Philipse second Justice. The number of the judges of the Supreme Court was thus arbitrarily reduced from three to two, for Daniel Horsemanden was not appointed third judge until 1737.

DeLancey and Philipse, however, decided that they had jurisdiction to determine matters in equity in a court of Exchequer and proceeded to hear counsel. Yet, although the whole case was set down, they heard argument on the third exception only, and then ordered that the plea in the case be set aside without further argument. At the time of the argument, counsel for Van Dam handed up a further exception to the commission of the judges, "that they were not granted for life nor during good behaviour." The clerk read it, endorsed it and noticed it as filed, when Philipse, without argument, ordered the minute to be blotted out, the endorsement to be razed, the exception to be taken off the file, and handed back to counsel, nor would he allow a bill of exceptions for use on appeal.

On November 30, 1733, Van Dam wrote a letter to Cosby's representative, in which he submitted three articles as a basis for the settlement of their troubles. But it was returned the next day, "it being such a Heap of INTELLIGIBLE (sic) Stuff, as I think very IMPROPER to trouble myself or the Governor with. - - - - *and doubt not but I shall hear that those will prove your best Friends* on *the End, who advised you* TO MAKE PEACE ON ANY TERMS."



J. Rogers sc.

RIP VAN DAM

the remarkable way by which the return to the commission was made. They are reproduced as showing the spirit which animated this litigation.

"William Spinks, *Mariner on Board His Majesty's Ship the* Seaford, *aged about Twenty six Years, being duly sworn on the holy Evangelists of Almighty God, on his Oath doth declare, that on or about the Tenth or Eleventh day of this instant* January, *one* Queen Marsh, *formerly belonging to the said Ship, but now he believes out of all Employ, and who lodges at Mr.* Hammonds, *next Door to the Coffee-house, came to Mrs.* Hawkins's, *a publick House upon the Dock, where this Deponent and* William Fearn *lodge, and got into Company with the Deponent and the said* William Fearn, *and called for Liquor to treat them with, and after some Hours Drinking, he told the Deponent and the said* Fearn, *that he had a Paper concerning* Van Dam, *that he would be obliged to them if they would set their Hands to, he said there was no Harm in it, and confirmed it with many Oaths, and that the Captain knew of it, and that it would oblidge the Captain as much as the Governour. Then he took out a Parchment, which he never opened to them, but shewed them upon the back of it some Words to this Purpose,* the within mentioned is not to be found. *And the said* Marsh *said it was only to put their Names to that after him, and he would sign it first, and swore many Oaths, they would never be called to an Account for it: Whereupon the said* Marsh *signed his Name under the said Words, and the Deponent and the said* Fearn, *signed after him. The Deponent says, he has since heard and believes that the above Parchment was a writ against Mr.* Van

Dam *to take him; but the said* Marsh *did never tell them so at that Time, nor to this Deponent never before, and he believes not to* Fearn *neither. And this Deponent doth say, that he verily believes the Capt. knew nothing of the said Writ; for that he has expressed a great Deal of Anger and Resentment at this Deponent and the said* Fearn, *for signing, as before, and ordered them this Morning to go and declare the Truth, and their concern for the doing thereof; which this Deponent hereby does: And farther saith not.*

William Spinks.

Sworn this 19*th Day of* January 1733–4. *Before* - - - - - - -

William Fearn, *Mariner, on Board his Majesty's Ship* Seaford, *being duely sworn on the holy Evangelists, on his Oath doth declare, that he was present and heard the above* William Spinks *declare on Oath as before; and so far as relates to this Deponent of his the said* Spinks' *Affidavit, is true; and the rest he believes to be true; and farther saith not.*"

William Fearn.

Sworn this 19*th Day of* January 1733–4. *Before* - - - - - - - -

In his printed case Van Dam says: "The above Affidavits make it plain what low Means have been taken to bring my Estate into the Hands of a Governour, that he may cut and carve for himself. Here are Men plied with Drink, deceived by Falsehoods and Lies, and their Hands fixt to a Return, *That I am not to be found*, when these Men never stir'd from

their Seats to seek me. - - - I am always to be found at my own House, and am able and willing to pay my own Debts: - - - I have already shown in Print the Account, upon which I think a very great Balance due to me from the Governour, when even the whole of what is demanded of me is deducted, which shows the unjust Design of this Prosecution, and these last Affidavits evidence the scandalous and base Methods with which it is carried on. - - - My Case published has been called Libelling; for my Part I don't pretend to understand Law, but I am sure it is Truth. And if I am to fall a Sacrifice to arbitrary Power, I have this Comfort left, that I have not deserved it, and hope I may be the last Example in this Province."

Another writ against Van Dam was directed to the sergeant-at-arms returnable on February 7th, but it was not executed. This is the last record in the case which Smith says was never settled, and that the court took cognizance of no equity causes after Van Dam's.

It is easy to understand what a ferment these proceedings caused. Here was a native of the Colony, a man who was rich, influential and popular, who was well known and respected, forced into expensive litigation by a grasping and unscrupulous governor who denied him common justice, who was, in reality, attempting to help himself to the property of a private citizen, and who hesitated at nothing which he thought would aid him in accomplishing his purpose.

The people had a long list of grievances against

their governor. They had been disgusted from the very first with the form and ceremony he affected when he received their representatives. Then, shortly after his arrival, while making a visit at Albany, he deliberately destroyed a deed to the corporation made by the Mohawk Indians. The deed had been made by the Indians for their protection against the rapid settling of the country, and was not to take effect until the dissolution of their tribe. It was destroyed because Cosby expected to receive certain fees when a new grant was executed.

They had heard, too, that in several instances Cosby had refused to grant lands to settlers unless he was permitted to retain a third for his personal use.

They had seen the Chief Justice of their Supreme Court deposed from his office, because his opinion on a matter of law differed from the wish of the governor, and they rightly inferred that any other official who attempted to stand in his way would be dealt with in the same summary manner.

Another serious complaint against Cosby was that at the assembly election held in Westchester in October, 1733, the Quaker voters were challenged on the ground that they were not freeholders, although they were all men of known estates. The sheriff required them to qualify by the usual oath. This they refused to do, but offered to affirm, as was their right, under the statute. Nevertheless, they were not permitted to affirm, and thirty-eight of them were arbitrarily disfranchised. These tactics were resorted to by Cosby's orders in the hope of defeating Lewis Morris, who was running against

William Foster, clerk of the Common Pleas, and who, it was said, paid Cosby one hundred pistoles for the appointment.

They knew that only such members of the Council were summoned to the meetings as were favorable to Cosby's designs, and they therefore began asking themselves if such a man as Van Dam could be wronged, how would a poor man fare? What security did the Province offer for a man's person or property? There were people living who could remember Andros, cruel and despotic; Fletcher, avaricious and fanatical; Cornbury, a bankrupt who came to New York to escape from his creditors; Hunter, timid and weak; and now they were cursed with a Cosby, worse in many ways than his predecessors. How long were they to serve as the prey of unprincipled men? Truly their position was indeed perilous, and they were rapidly realizing the truth of Van Dam's words when he said, "We are Tenants at Will to Governors, and exposed to be fleeced by them from Time to Time at their Pleasure."

The practical effect of Cosby's conduct was the division of the people into two political parties, one the court party with Cosby as its leader, with James DeLancey, Frederick Philipse, Richard Bradley and Francis Harison as the principal members. They also had with them George Clarke, a member of Council, who succeeded Cosby as Governor in 1736; Daniel Horsemanden, another member of Council, afterwards Justice of the Supreme Court, and author of the rare "Narrative of the Negro Plot;" Archibald Kennedy, later Earl of Cassillis, and Receiver

General of the Province for more than forty years; Joseph Murray, John Chambers, and a small following among the citizens at large.

The opposition or popular party had a majority in the Assembly and a large following among the people. The principal men were Lewis Morris, Lewis Morris, Jr., James Alexander, William Smith, Rip Van Dam, Vincent Mathews, Gerardus Stuyvesant, Philip Livingston, third Lord of the Manor, and Cadwallader Colden, who was member of Council for fifty-five years, Surveyor General of the Province, and later Lieutenant Governor. The following bit of gossip was found among the papers of an intimate friend of Colden:

"In '61 on Gov. Monckton's appointment to the Expedition against Martinico he (Colden) took the reins of Government which he held till the end of '65 when Sir H. Moore arrived. On Sir Harry Moore's arrival he retired to a Farm on Long Island, where I took my leave of him in '73. Tho far advanced he still retained all his Faculties and annually a set of his friends went from the City to celebrate his Birth-Day, when he cheerfully took his Bottle till 2 in the Morning."

The following is an extract from a letter written by Philip Livingston to James Alexander, which shows the state of feeling towards Cosby and his party. Alexander had previously written to Livingston complaining of the seizure of his letters.

"If Mr. Van Dam had suffered himself tamely to be devoured certainly another Morcell, as you say, would have followed, no person could expect to have

escaped. If you and a few more had not opposed the arbitrary proceedings, they had been established to the Ruin of the whole Province. . . . It's very shocking that your letters have been intercepted. There can nothing bad enough be expected or apprehended from such Vile Varlets who are guilty of such Felony."

Vincent Mathews, who was a prominent man in Orange County, being at different times County Clerk, Assemblyman and Boundary Commissioner, also wrote as follows to Alexander:

"If the Hand of Providence does not arrest and give us some relief very quickly, I cannot see that any one Man of Honour and Honesty can remain in this Province without falling a Sacrifice to the basest and vilest of Villains."

It is not surprising, therefore, to find a letter from Alexander to a friend in London, describing the situation of the Province in the following language:

"The people of this Province had deservedly gained the character of being as easily governed as any in the King's dominions. They are generally industrious, the greatest number of them Dutch, and seldom trouble their heads with politics, but such people generally are most violent when they apprehend their liberties and properties to be in danger, and indeed we were lately afraid of their breaking out into open violence."

CHAPTER II

EXTENT OF THE CITY IN 1734—THE BEGINNING OF ZENGER'S NEWSPAPER—INCIDENTS LEADING TO THE TRIAL

N 1734 the City of New York contained about 10,000 inhabitants, of whom fully 1,700 were negro slaves. On the west side of the island, above what is now Cortlandt street, there was only an occasional house to be met with, and the same was true of the east side north of Frankfort street. South of this, however, the town was far from being solidly built up. In 1731 there were only 1,500 houses in the city, and in the same year it is recorded that quail could be killed in the brush east of the present Broadway.

There was but little business carried on, and it was principally in the direction of importing from abroad the supplies necessary for the Colony. The Fort, the Governor's House, the City Hall, and the churches were the principal buildings. Little devotion was paid to the arts and sciences and there were no indications of the controlling power which the city was destined to exert. There was but one newspaper, "The New York Weekly Gazette," the first

paper published in the Colony, founded by William Bradford in October, 1725. At first it was merely a half sheet of foolscap, but in 1726 and 1727 it was occasionally issued with four pages. It was printed in a crude and rough fashion and its columns were filled principally with foreign news and advertisements, yet small and poor as it was it was amply sufficient for the needs of the public.

As Cosby became day by day more and more unpopular, one can almost see the citizens of New York gathering at their favorite meeting places, the Black Horse Tavern and the market place, and discussing the latest actions of their Governor. It was really the only way they had for ascertaining what was going on, for Bradford was a conservative man, and being public printer his paper was, naturally enough, devoted to upholding Cosby's position.

There was, however, in New York at this time, beside Bradford, a poor German printer, John Peter Zenger by name, who was carrying on a struggling little business. The records of Zenger's life are very meagre and but little is known of him.

He was born in Germany, the name of the place is unknown, in 1697. He was one of a large company of Palatines who were sent to America in 1710 by Queen Anne. With him came his mother Johanna, his sister Anna Catharina, and a brother Johannes. The father of the family died on shipboard. After their arrival in New York the boy John was apprenticed to William Bradford on October 26, 1711, for a term of eight years. At the expiration of his apprenticeship he went to Maryland,

probably with the expectation of finding better opportunities for practicing his trade, and settled at Chestertown in Kent County. In April, 1720, he petitioned the Maryland Assembly to be allowed to print the session laws. His petition was granted and it was suggested that he be given seven hundred pounds of tobacco for doing the work, but no trace of these session laws can be found, and it is doubtful if he ever printed them. At a later session of the Assembly Zenger applied for naturalization; his bill was the first to pass and it cost him a fee to the Speaker of £1, 10s., and 15s. to the Clerk.

He saw but little chance of success in Maryland and returned to New York, where on September 11, 1722, he married Anna Catharina Maulin, who is said to have been one of the first persons interested in Sunday School work in the city. The records of the Dutch Church state that Zenger was a widower at the time of this marriage, and it is known that his son John was born in 1719, but it is impossible to discover where the first marriage took place or who his first wife was. On September 10, 1723, Zenger was made a freeman of the city, having been naturalized July 6 of the same year.

In 1725 he formed a partnership with Bradford, but it was of short duration, and there is but one book extant bearing the imprint of their joint names.

In 1726 Zenger started in business for himself. His shop was on Smith street, which was that portion of the present William street lying between Maiden Lane and Pearl. In May, 1734, he moved to Broad street near the Long Bridge. He printed

a few political tracts and a number of unimportant books, principally theological in character and written in Dutch. In 1730 he brought out "Vanema's Arithmetica," which was the first arithmetic printed in the Colony.

After Cosby's erection of the Court of Exchequer and his removal of Morris, the popular party determined that the people of the Colony should see him in his true character. For this purpose it was necessary that they should have a newspaper. Accordingly they selected Zenger for their printer and probably aided him financially in starting the "New York Weekly Journal, containing the freshest Advices, Foreign and Domestic," the first number of which appeared November 5, 1733.

The idea of the popular party was, that a printed account of Cosby's actions would arouse such a storm of indignation that he would surely be recalled. The following extracts are from letters written about this time to former Governor Robert Hunter by James Alexander:

"Our Governor who came here but last year has long ago given more Distaste to the People than I verily believe any Governor that ever this Province had during his whole government. . . . . Nothing does give a greater lustre to your and Mr. Burnet's administrations than the being succeeded by such a man."

"Inclosed is the first of a newspaper designed to be continued Weekly and chiefly to expose him and those ridiculous flatteries with which Mr. Harison loads our other Newspaper which our Governor claims and has the privilege of suffering

Engraved by Charles Burt from an Original sketch by John Watson
in the Possession of Mr Wm A. Whitehead

Lewis Morris

nothing to be in but what he and Mr. Harison approve of."

A censorship of the press had been established by the commission and instructions issued to Governor Bellomont in 1697 as follows:

"For as much as great inconveniences may arise by the liberty of printing within the province of New York, you are to provide all necessary orders that no person keep any press for printing, nor that any book, pamphlet or other matter whatsoever be printed without your especial leave and consent first obtained."

But it does not seem to have been continued in the commissions of subsequent governors, or Cosby would certainly have taken this means of suppressing the new paper.

Lewis Morris, Lewis Morris, Jr., James Alexander, William Smith and Cadwallader Colden were the principal contributors to the columns of the new paper. Indeed, they wrote practically everything but the news notices. Alexander seems to have been editor in chief and to have passed on most of the contributions prior to their publication, as many manuscript articles designed for the "Journal" are found among his papers. Zenger was poorly educated, and he possessed little experience or skill in his trade. His business ventures up to this time had been failures and, with a large family to support, he was very poor. It seems certain that he went into the newspaper scheme from a commercial point of view only, and without any adequate idea of the results which were to be accomplished.

The "Journal" was a folio in size, with four pages. The press work was better than that of the "Gazette," but there were many grammatical errors, Zenger's knowledge of English being very limited. The paper sold for three shillings per quarter, and advertisements cost three shillings for the first insertion and one shilling for each insertion thereafter.

The "Journal" immediately proved to be a very popular paper, and some of the earlier numbers ran through as many as three editions. Supplements, which up to that time had only been used on rare occasions for governor's addresses and fiscal statements, became common. The articles were written with spirit and cleverness, and they were eagerly read.

In the second number there appeared an article on the liberty of the press, which was used as the text of many others. The articles were filled with direct allusions to Cosby and his conduct. For instance, in number four there is an article on civil government and its obligations, with the following: "A supream Magistrate may be conceived to injure his Subjects, if in his Dealings with them, he treats them either not as Subjects, or not as Men. The Duty of a supream Magistrate respects either the whole People, or particular Persons; and thus much he owes to the whole People, that he procures the Good and Safety of the Community, according as Laws direct and prescribe. Therefore he injures the whole People, if he evades or suffer these LAWS to be evaded to their hurt."

In the same number appeared the following advertisement:

"A Large Spaneil, of about Five Foot Five Inches High, has lately stray'd from his Kennel with his Mouth full of fulsom Panegericks and in his Ramble dropt them in the NEW-YORK-GAZETTE; when a Puppy he was mark'd thus ⅃ ⊐, and a Cross in his Forehead, but the Mark being worn out, he has taken upon him in a heathenish Manner to abuse Mankind, by imposing a great many gross Falsehoods upon them. Whoever will strip the said Panegericks of all their Fulsomness and send the Beast back to his Kennel, shall have the Thanks of all honest Men, and all reasonable Charges."

This is directed at Francis Harison, who, as an ardent adherent of Cosby, wrote many articles to the "Gazette" supporting his actions.

In number five there is an article on "Trial by Jury," with an allusion to Cosby's depriving Van Dam of a jury trial in their disputes. A quotation from it is as follows:

"Deservedly therefore is this Tryal by Juries, ranked amongst the choicest of our fundamental Laws, which whosoever shall go about openly to suppress, or craftily to undermine, does ipso facto, ATTACK THE GOVERNMENT, AND BRING IN AN ARBITRARY POWER, AND IS AN ENEMY AND TRAYTOR TO HIS COUNTRY."

In number eight is an article by Lewis Morris, purporting to be an interview with a magician, in which he says that from the initial letter of the sur-

name of a Governor, one might form a judgment as to his character and conduct. "Provinces have also their *Cabala* Letters, and *York* and *Jersey* seem pretty much under the same Influence, the *H's* and *C's* pertain to them. The *H* seems to be a fortunate Letter, witness *Hamilton*, *Hurley*, and *Hunter*, Men of amiable Characters. On the contrary *C* has always proved unhappy, either to the Government, or to themselves, or both: He instanced *Campbell* and *Cartaret* in *Jersey*, and *Coot* and *Cornbury* in *New-York*."

Then follows an account of Cornbury's administration, and a parallel is drawn between it and Cosby's by implication, and the article concludes with, "What has once been may be again."

In number nine we learn that, "*The Spaniel strayed away is of his own Accord returned to his Kennel, from whence he begs Leave to assure the Public, that all those fulsome Panegirics were dropt in the* New York Gazette *by the express Orders of His Master. That for the gross Falsehoods he is charged with imposing upon Mankind, he is willing to undergo any Punishment the People will impose on him, if they can make full Proof in any Court of Record that any one Individual Person in this Province (that knew him) believed any of them.*"

In number ten the articles begin to take the form of letters apparently written by the subscribers, and replies were made to the articles in the "Gazette." It can readily be seen that the new paper and the radical tone of its articles created great excitement, as nothing like it had before appeared in the Province. Both parties read it, and everybody

wondered what the next number would disclose. About this time Van Dam's case, which was printed in sections, was brought out, and for a while Zenger probably had more work than he could attend to. In fact Zenger says in number twelve in a card to his patrons, "*I must acknowledge my Obligations to you to be such, that you do so plentifully supply me, that tho for some Weeks past I have used my smallest Letter, and to put as much into a Paper as was in my Power, yet I have now Supplies sufficient to fill above seven weekly Papers more. . . . I have thought of publishing a* Thursdays *Journal weekly for the next Quarter.*"

At the opening of court on January 15, 1734, Justice DeLancey, referring to Van Dam's case, charged the grand jury on libels, saying, "You must have observed, that of late there have been served Papers printed, with a Design and a Tendency to alienate the Affections of His Majesty's Subjects of this Province from the Persons whom His Majesty had thought it fitting to set over them ; and in particular, some Men with the utmost Virulency have endeavored to asperse his Excellency and vilify his Administration; they have spread abroad many seditious Libels, in order to lessen in the People's Minds the Regard which is due to a Person in his High Station. . . . The Authors are not certainly known, and yet it is an easy Matter to guess who they are, that by making Use of Mr. *Van Dam's* Name, have gain'd some credit among the common People, which they were not wont to have, and never thought to have deserved."

He concluded by saying, "I know most of you

Personally, and I make no doubt but that you will discharge your Duty." The charge covered six folio pages, but the grand jury returned no indictments.

This was followed by a pamphlet entitled, "Some Observations on the Charge delivered to the Grand Jury by the Honourable James DeLancey," written by Lewis Morris, in which the new Chief Justice was severely criticised for his application of the law.

The court party then found themselves in a quandary: the case against Van Dam had been dropped on account of the rising indignation of the people. But now they were stung by the attacks of the "Journal," which were sharper than ever since the failure of the Grand Jury to indict, though ordered to do so by the Chief Justice in the plainest language possible. They were sullen and revengeful, and denounced Alexander and Morris at every opportunity, as they were the head and front of the movement against Cosby.

Cosby again complained to the London Board of Trade, saying:

"Cabals were form'd against the Government and a meeting of their factious men is still held several nights in a week at a private lodging which I have discover'd Alexander always prsent and Morris."

The Governor's wife had been heard to say that her highest wish for Alexander and Smith was to see them strung up on the gallows at the gate of the Fort. Accordingly, their next step was a more desperate one.

On the evening of Friday, February 1, 1734, as some of James Alexander's friends, Mr. and Mrs. John

Hamilton and Mrs. Ann DePeyster, were leaving his house, they picked up a letter outside the door directed to Mrs. Alexander. On being read, it proved to be an anonymous demand for money coupled with a threat to destroy the members of the family in case of a refusal. James Alexander at once recognized the address as being similar to the handwriting of Francis Harison. William Smith and Colonel Lurting, the Mayor, also recognized the writing as similar to Harison's. Alexander was summoned to attend before a committee of the Council appointed to investigate the matter, but declined to appear, since Harison was one of the committee. The matter was brought to the attention of the grand jury. After deliberation they declared that there was a similarity of hands, refusing to say to whose, and asked the Governor to offer a reward for the discovery of the writer. The Governor accordingly offered a reward of fifty pounds for the discovery of the author of the letter and fifty pounds to any accomplice who would come forward and make known the truth of the matter.

From a letter written soon after this time by James Alexander to Lewis Morris, we get his idea of the motive for the anonymous letter. He says: "By comparing the 'Spectator' in Bradford's 'Gazette' of Jan. 28, the Monday before Friday the First of February when the incendiary Letter was found in my Entry, in which it's advanced that the taking away the good name of another was to be punished by Death; that a good name is equal in value to Life itself, the words good name being several times in Italicks

there, and the papers published in the 'Gazette' Feb. 4, which must have been in the press before the incendiary letter was found, in which it's said a good name ought to be maintained by the Sacrifice of Life, and the next article in that paper concluding, 'Cut off the Causes and the Effects will cease.' I say comparing these two Gazettes with the Report of the Council and Harison's Address, in which a good name is spoke of in the same way, they give not a small Light into the plot and design of the incendiary Letter and of the author or authors of it. For how could they expect, as the handwriting of the Letter was not much disguised, but that I should have proclaimed to all the author of it. As I did not, they were in their Committee in Harison's presence to oblige me to say it. And then according to the papers in these two Gazettes, he was justified in destroying me at once, and a pety jury could have been found to have brought it in manslaughter from the heat of blood a man must be put into by hearing himself charged with such a villany. His motives to this murder are obvious for he found himself so pushed in Truesdell's two cases that there was no averting his disgrace but by mine or Smith's destruction, and possibly they expected the Murder of me would cause all the rest of us to fly to save our Lives. You or Mr. Paris have those Gazettes which if You'll view with these Hints I believe this matter will appear plainer to you than I can point it out. There's a great satisfaction that he has left this Country but a Dread that he may assassinate You, or have some ruffians do it, and You cannot be too much

upon Your guard against so execrable a villain and his plots."

It is needless to say that the rewards offered by the Governor were never claimed. Harison afterwards died in great poverty in London.

In the meantime there had been a great outcry against the new court, many petitions complaining of it had been presented to the Assembly together with Van Dam's printed case. Finally the Assembly decided to hear counsel, and on June 7, 1734, William Smith delivered a long opinion against the jurisdiction of the court. He was followed on the twelfth by Joseph Murray, who spoke in favor of its procedure, but the Assembly seem to have taken no action in the matter.

Smith's speech before the Assembly won so much support for the popular party that the Governor, seeing the danger of the situation, invited persons of inferior station to the Fort and dined them at his table, many of whom signed an address applauding the mildness and merit of his administration. This sudden change of front on the part of Cosby, who had previously been very pompous in his bearing towards the citizens, is thus commented on in a letter to the "Journal":

"Mr. *ZENGER:* I Am a poor Man and have been Tenant to several Landlords since I came into this Country, I have Paid my Rents to all of them tho' some Times not on quarter Day, and have been well used by all my Landlords, except the Last, who has given me several gross Affronts, altho I have paid him by far the greatest Part of his Rent and made

him several handsom Presents. But now of late he grows extremely Civil, I am invited, and (when Business allows me to come) entertained after the elegantest Manner.

I desire you to Publish this for I am at a Loss to know the Reason of this late and extraordinary Civility, is it not to Cajole me to sign a new Lease, or to give him more Rent?"

Among the signers of the address were the Aldermen and Common Councilmen of the city. At the election held on St. Michael's day, 1734, the popular party put up opposition candidates to the signers. A bitter contest ensued, but the new candidates were all elected.

The "Journal" said: "*Simon Johnson* and *Edie Myer* (aldermen in South ward elected by four majority) carried it against the Governour's Interest notwithstanding there voted against them a considerable Merchant who was an Inhabitant of another Ward, and about 15 of the Soldiers of His Majesty's Garrison, besides the Recorder of the City and his Interest. . . . . All the Members that are chosen were put up by an Interest opposite to the Governour's except *John More*, (Dock ward 1 maj.) in whose Favour a great many of the City joyned, or he would have lost his Election. All those that were Aldermen and Common-Councilmen before signed the Address to the Governour that is printed in Mr. *Bradfora's Gazette* No. 449 except Alderman *Styvesand*, for which Reason he had no Opposition in the new Choice."

In the evening there was great rejoicing over the popular victory; houses were illuminated and speeches

A Song made upon the Election of new Magistrates for this City.

To the tune of, To you fair Ladies now on land

To you good lads that dare oppose
all lawless power and might,
You are the theme that we have chose,
and to your praise we write:
You dar'd to shew your faces brave
In spight of every abject slave;
with a fa la la.

Your votes you gave for those brave men
who feasting did disdain;
And never prostituted pen
to certify the lies
That were drawn up to put in chains,
As well our nymphs as happy swains;
with a fa la la.

And tho the great ones frown at this,
what need have you to care?
Still let them fret and talk amiss,
you'll shew you boldly dare
Stand up to save your Country dear,
In spight of usquebaugh and beer;
with a fa la la.

They beg'd and pray'd for one year more,
but it was all in vain:
No servants you'd have, you swore;
By jove you made it plain:
So sent them home to take their rest.
And here's a health unto the best;
with a fa la la.

A Song made upon the foregoing Occasion.

To the Tune of, Now, now, you Ladies all shall stoop.

Come on brave boys, let us be free
for Liberty and Law.
Boldly despise the haughty Knave,
that would keep us in awe.
Let's scorn the tools bought by a sop,
and every cringing fool.
The man who basely bend's a hop,
a vile insipid tool.

Our Country's Rights we will defend,
like brave and honest men;
We voted right and there's an end,
and so we'll do again.
We vote all signers out of place,
as men who did amiss,
Who sold us by a false address.
I'm sure we're right in this.

Exchequer courts, as void by law,
great grievances we call;
Tho' great men do assert no flaw
is in them; they shall fall,
And be contemn'd by every man
that's fond of liberty.
Let them withstand it all they can,
our Laws we will stand by.

Tho' pettyfogging knaves deny
us Rights of Englishmen;
We'll make the scoundrel rascals fly,
and ne'er return again.
Our Judges they would chop and change
for those that serve their turn,
And will not surely think it strange
if they for this should mourn.

Come fill a bumper, fill it up,
unto our Aldermen;
For common-council fill the cup,
and take it o'er again.
While they with us resolve to stand
for liberty and law,
We'll drink their healths with hat in hand,
whoraa! whoraa! whoraa!

were made. The next day a couple of ballads were circulated through the town commemorating the occasion, containing many sarcastic allusions to the Governor and his party. It would be interesting to know who the author of the ballads was, but he has left no trace of his identity.

On October 15, 1734, Chief Justice DeLancey delivered another charge to the Grand Jury for New York county on the subject of Libels. Among other things he said, "I shall conclude with reading a Paragraph or two out of the same Book, concerning Libels; they are arrived to that Height that they call loudly for your Animadversion; it is high Time to put a Stop to them; for at the rate Things are now carried on, when all Order and Government is endeavored to be trampled on; Reflections are cast upon Persons of all Degrees, must not these Things end in Sedition, if not timely prevented? Lenity you have seen will not avail, it becomes you then to enquire after the Offenders, that we may in a due Course of Law be enabled to punish them. If you, Gentlemen, do not interpose, consider whether the ill Consequences that may arise from any Disturbances of the publick Peace, may not in part, lye at your Door?"

He further said, "You must have heard of two *Scandalous Songs* that are handed about, it is your Duty to enquire the Author, Printer and Publisher of them. Sometimes heavy, half-witted Men get a knack of Rhyming, but it is Time to break them of it, when they grow Abusive, Insolent, and Mischievous with it."

The jury returned a presentment of the songs on the election when the Supreme Court issued the following order:

"*At a Supreme Court of Judicature held for the Province of* New-York, *at the City of* New-York, *Octob.* 19, 1734. *Present the Honourable* James DeLancey, *Esq; Chief Justice, the Honourable* Frederick Philipse, *Esq; second Justice.*

"THe Grand Jury having yesterday Presented two Scandalous and Seditious Songs or Ballads, lately dispersed about this City, one entitled, *A Song made upon the Election of New Magistrates for this City;* the other entituled, *A Song made on the foregoing Occasion,* both highly defaming the present Administration of His Majesty's Government in this Province, tending greatly to inflame the Minds of His Majesty's good Subjects, and to disturb and destroy that Peace and Tranquility which ought to subsist and be maintained in this Colony and in all other well governed Communities; of which *Virulent, Scandalous* and *Seditious Songs* or *Ballads,* they have not been able, on a strict enquiry, to discover either the Author, Printer or Publisher. *It is therefore Ordered by the Court* That said *Virulent, Scandalous* and *Seditious Songs* or *Ballads* be burnt before the City-Hall, sitting the Court, by the hands of the *common Hangman,* or *Whipper,* on *Monday,* ted 21*st* of this Instant, at 12 o'Clock, and that the High-Sheriff of this City and County do take Order accordingly."

The fact that out of the nineteen members of

this grand jury five had served on the first one, was probably the reason they returned no indictment. This method of procedure, having thus been found to be barren in results, on October 17th, the Council sent a message to the Assembly, saying that they had several of Zenger's Weekly Journals laid before them and other scurrilous papers tending to alienate the affections of the people of the Province from His Majesty's Government, and asked for a conference with a committee from the Assembly to examine into said papers and their authors. A committee was appointed and the concurrence of the Assembly was asked for in the following:

"That Zenger's Papers No. 7, 47, 48, 49 which were read, and which we now deliver, be burnt by the hands of the common Hangman, as containing in them many Things derogatory of the Dignity of His Majesty's Government, reflecting upon the Legislature, upon the most considerable Persons, in the most Distinguished Stations in the Province, and tending to raise Seditions and Tumults among the People thereof. That you concur with us in Addressing the Governour to issue His Proclamation, with a Promise of Reward for the Discovery of the Authors or Writers of these Seditious Libels. That you concur with us in an Order for Prosecuting the Printer thereof. That you concur with us in an Order to the Magistrates, to exert themselves in the Execution of their Offices, in order to preserve the public Peace of the Province."

On October 22, the House took the matter into consideration and after several debates it was "*OR-*

DERED THAT THE SAID PAPERS AND REQUEST LYE ON THE TABLE."

On November 2, the papers and request were returned to Council, and on the fifth the Sheriff delivered the following order of Council to the court of Quarter Sessions directed "To *Robert Lurting*, Esq; Mayor of the City of *New-York*, and the Rest of the Magistrates for said City and County."

"*Whereas by an Order of this Board, of this Day, some of* John Peter Zenger's *Journals, entitled,* The New-York weekly Journal containing the freshest Advices, foreign and domestick, No. 7, 47, 48, 49, *were ordered to be burnt by the Hands of the common Hangman, or Whipper, near the Pillory in this City, on* Wednesday, *the 6th Instant, between the Hours of Eleven and Twelve in the Forenoon, as containing in them many Things tending to Sedition and Faction, to bring His Majesty's Government into Contempt, and to disturb the Peace thereof, and containing in them likewise, not only Reflections upon His Excellency the Governour in particular, the Legislature in general, but also upon the most considerable Persons in the most distinguished Stations in the Province. It is therefore ordered, That the Mayor, and Magistrates of this City, do attend at the Burning of the several Papers or Journals aforesaid, Numbered as above mentioned.*"

Upon reading the order, the court forbade its entry in the records at that time, and some of the members declared that if it was entered they would at the same time enter their protest against it.

On the sixth of November Governor Cosby issued two proclamations, one offering a reward of

By his Excellency

William Cosby, Captain General and Governour in Chief of the Provinces of *New-York*, *New-Jersey*, and Territories thereon depending in America, Vice-Admiral of the same, and Colonel in His Majesty's Army.

A PROCLAMATION.

WHereas Ill-minded and Disaffected Persons have lately dispersed in the City of *New-York*, and divers other Places, several Scandalous and Seditious Libels, but more particularly two Printed Scandalous Songs or Ballads, highly defaming the Administration of His Majesty's Government in this Province, tending greatly to inflame the Minds of His Majesty's good Subjects, and to disturb the Publick Peace. *And Whereas* the Grand Jury for the City and County of New-York did lately, by their Address to me, complain of these Pernicious Practices, and request me to issue a Proclamation for the Discovery of the Offenders, that they might, by Law, receive a Punishment adequate to their Guilt and Crime. *I Have* therefore thought fit, by and with the Advice of his Majesty's Council, to issue this Proclamation, hereby Promising *Twenty Pounds* as a Reward, to such Person or Persons who shall discover the Author or Authors of the two Scandalous Songs or Ballads aforesaid, to be paid to the Person or Persons discovering the same, as soon as such Author or Authors shall be Convicted of having been the Author or Authors thereof.

GIVEN under My Hand and Seal at Fort-George *in* New-York *this Sixth Day of* November, *in the Eighth year of the Reign of Our Sovereign Lord* GEORGE *the Second, by the Grace of GOD of* Great-Britain, France *and* Ireland, KING, *Defender of the Faith, &c. and in the year of Our LORD*, 1734.

By his Excellency's Command,
Fred. Morris, *D. Cl. Conc.*

W. COSBY.

GOD Save the KING.

fifty pounds for the conviction of the author of the articles in the "Journal;" the other offering a reward of twelve pounds for the conviction of the author of the scandalous songs.

On the same day the sheriff, John Symes, moved the court for compliance with the order, when one of the Aldermen read the following protest, which was approved by all the Aldermen, either expressly or by their not objecting to it:

"And whereas this Court conceives, they are only to be commanded by the King's Mandatory Writs, authorized by Law, to which they conceive they have the Right of shewing Cause why they don't obey them, if they believe them improper to be obey'd, or by ORDERS, which have some known Laws to authorize them; and whereas this Court conceives, THIS ORDER to be no Mandatory Writ warranted by Law, nor knows of no Law that authorized the making of the Order aforesaid; So they think themselves under no Obligation to obey it: Which Obedience, they think, would be in them, an opening a Door for arbitrary Commands, which, when once opened, they know not what Dangerous Consequences may attend it. Wherefore this Court conceives it self bound in Duty, (for the Preservation of the Rights of this Corporation, and as much as they can, the Liberty of the Press, and the People of the Province, since an Assembly of the Province, and several Grand Juries, have refused to meddle with the Papers, when applied to by the Council) *to protest against the ORDER aforesaid and to forbid all the Members of this Corporation, to pay any Obedience to*

it, until it be shown to this Court, that the same is Authorized by some known Law, which they neither know nor believe that it is."

On reading the protest Francis Harison, the Recorder, who was one of the Council present at the making of the order, was called on to show by what authority the order was made. He cited in its support the case of Dr. Sacheverel's sermon, which was ordered burnt by the hangman, and said the Mayor and Aldermen of London were ordered to attend. To this one of the Aldermen replied that the cases were not parallel, that Sacheverel and his sermon had been impeached by the House of Commons and prosecuted before the House of Lords, which had cognizance of such affairs, and that he had a fair hearing for his defense; and after such hearing he and his sermon had been justly and legally condemned; that the judgment did not direct the Aldermen but only the Mayor and Sheriffs of London and Middlesex, to be present at the burning, and that the order on the judgment did not include the Mayor.

It was further said that if the Recorder could show that the Council had the same authority as the House of Lords in the matter and that the papers had been legally condemned the case of Sacheverel would be in point. And he was asked to produce his authorities warranting this order, to which he made reply, that "he did not carry his Books about with him." It was suggested that he could send a constable for them. He then arose and cited the case of Bishop Burnet's Pastoral Letter which was

By his Excellency

William Cosby, Captain General and Governour in Chief of the Provinces of *New-York*, *New-Jersey*, and Territories thereon depending, in America, Vice-Admiral of the same, and Colonel in His Majesty's Army.

A PROCLAMATION.

WHereas by the Contrivance of some evil Disposed and Disaffected Persons, divers Journals or Printed News Papers, Entitled, *The New-York Weekly Journal, containing the freshest Advices, Foreign and Domestick*) have been caused to be Printed and Published by *John Peter Zenger*, in many of which Journals or Printed News-Papers (but more particularly those Numbred 7, 47, 48, 49) are contained divers Scandalous, Virulent, False and Seditious Reflections, not only upon the whole Legislature, in general, and upon the most considerable Persons in the most distinguish'd Stations in this Province, but also upon His Majesty's lawful and rightful Government, and just Prerogative. Which said Reflections seem contrived by the wicked Authors of them, not only to create Jealousies, Discontents and Animosities in the Minds of his Majesty's Liege People of this Province, to the Subversion of the Peace & Tranquility thereof, but to alienate their Affections from the best of Kings, and raise *Factions*, *Tumults* and *Sedition* among them. *Wherefore* I have thought fit, by and with the Advice of His Majesty's Council, to issue this Proclamation, hereby Promising a Reward of *Fifty Pounds* to such Person or Persons who shall discover the Author or Authors of the said *Scandalous*, *Virulent* and *Seditious Reflections* contained in the said *Journals* or *Printed News-Papers*, to be paid to the Person or Persons discovering the same, as soon as such Author or Authors shall be Convicted of having been the Author or Authors thereof.

GIVEN under My Hand and Seal at Fort-George in New-York this Sixth Day of November, in the Eighth year of the Reign of Our Sovereign Lord GEORGE *the Second, by the Grace of GOD, of Great-Britain, France and* Ireland, *KING Defender of the Faith, &c. and in the Year of Our LORD* 1734.

By his Excellency's Command,
Lewis Morris, D. Cl. Conc.

W. COSBY

GOD Save the KING

ordered burnt by the High Bailiff of Westminster, "upon which he abruptly went away, without waiting for an Answer or promising to bring his Books, and did not return sitting the Court."

It was then moved that the protest be entered, but this was objected to on the ground that the order would then have to be entered and that "it was not fit to take any Notice of IT," and the court then agreed no entry should be made of either. The sheriff then asked that the court would direct their Whipper to perform the order, but they replied that as he was the officer of the Corporation they would give no such order.

Zenger says: "Soon after which the Court adjourned, and did not attend the Burning of the Papers. Afterwards about Noon, the Sheriff after reading the Numbers of the several Papers which were ordered to be burnt, delivered them into the Hands of his own Negroe, and ordered him to put them into the Fire, which he did, at which Mr. Recorder, *Jeremiah Dunbar*, Esq; and several of the Officers of the Garrison attended."

On Sunday, November 17th, Zenger was arrested under the following warrant of the Council:

"It is ordered that the Sheriff for the City of *New-York*, do forthwith take and apprehend *John Peter Zenger*, for printing and publishing several Seditious Libels dispersed throughout his Journals or News Papers, entitled, *The New-York Weekly Journal, containing the freshest Advices, foreign and domestick;* as having in them many Things, tending to raise

Factions and Tumults, among the People of this Province, inflaming their Minds with Contempt of His Majesty's Government, and greatly disturbing the Peace thereof, and upon his taking the said *John Peter Zenger, to commit him to the Prison or common Goal of said City and County.*

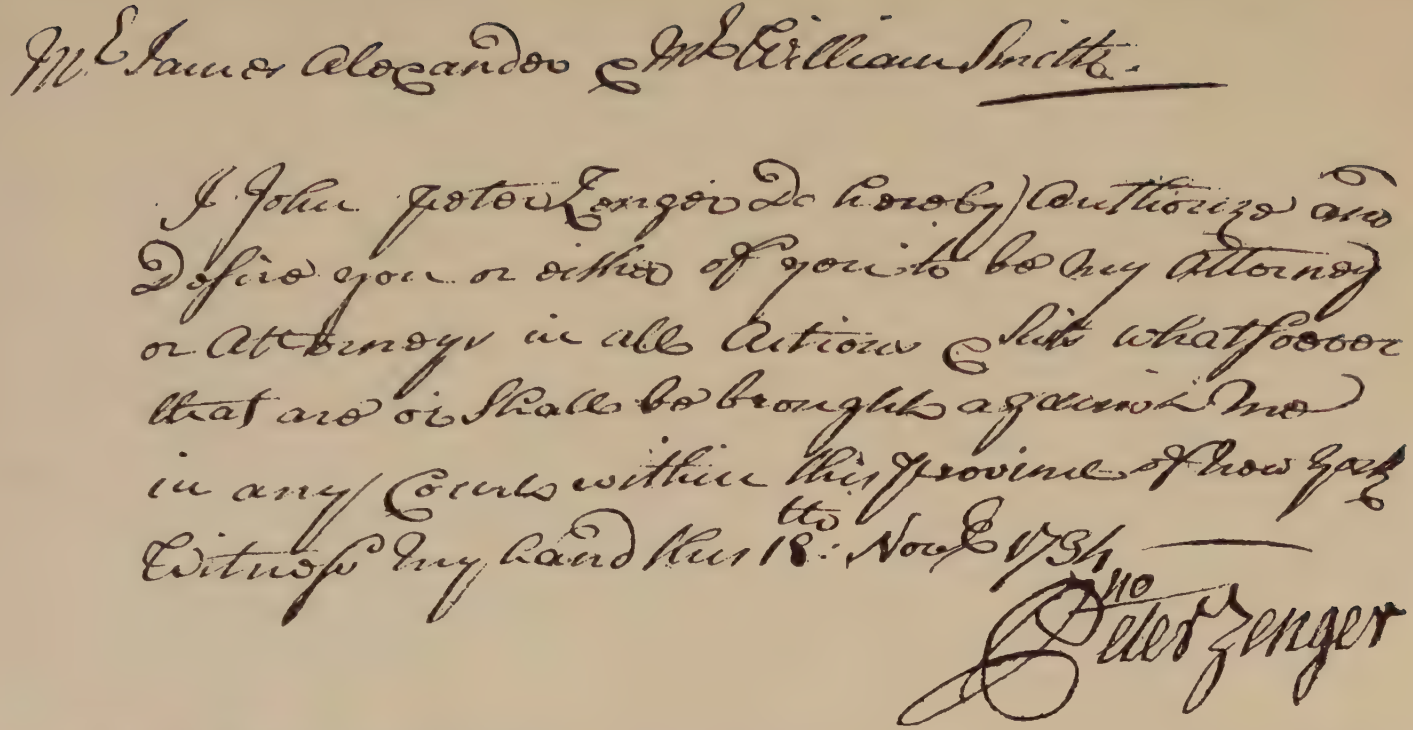
Fred. Morris, *D. Cl. Con.*"

The issuing of this warrant by the Council was an extraordinary proceeding. In the first place, it was extremely doubtful if the Council had power to issue such process, especially as with the Governor they constituted a court for the correction of errors and appeals. And in the second place, the warrant by its terms was merely the expression of the opinion of the Council, supported by no evidence, and with no opportunity offered to the accused to defend himself.

Zenger was for several days denied the use of pen, ink and paper, and liberty of speech with any person. The Monday after his arrest the "Journal" did not appear, and in the next number he issued the following notice:

"*To all my Subscribers and Benefactors who take my weekly* Journall. *Gentlemen, Ladies and Others;*

"AS you last week were Disappointed of my Journall, I think it Incumbent upon me, to publish my Apoligy which is this. On the Lords Day, the Seventeenth of this Instant I was Arrested, taken and Imprisoned in the common Goal of this City, by Virtue of a Warrant from the *Governour*, and the Honorable *Francis Harrison*, Esq; and others in Council of which (God willing) Yo'l have a Coppy whereupon I was


Mr James Alexander & Mr William Smith.
I John Peter Zenger do hereby Authorize and
Desire you or either of you to be my Attorney
or Attorneys in all Actions Suits whatsoever
that are or shall be brought against me
in any Courts within this Province of New York
Witness my hand this 18th Nov 1734
Peter Zenger

FACSIMILE OF ZENGER'S POWER-OF-ATTORNEY TO JAMES ALEXANDER AND WILLIAM SMITH, TO ACT AS HIS ATTORNEYS.

put under such Restraint that I had not the Liberty of Pen, Ink, or Paper, or to see, or speak with People, till upon my Complaint to the Honourable the Chief Justice, at my appearing before him upon my *Habias Corpus* on the *Wednesday* following. Who discountenanced that Proceeding, and therefore I have had since that time the Liberty of Speaking through the Hole of the Door, to my Wife and Servants by which I doubt not yo'l think me sufficiently Excused for not sending my last weeks *Journall*, and I hope for the future by the Liberty of Speaking to my servants thro' the Hole of the Door of the Prison, to entertain you with my weekly *Journall* as formerly. *And am your obliged Humble Servant.*"

A habeas corpus was procured by his counsel returnable on the 20th, when it was insisted that the prisoner should be admitted to reasonable bail. Zenger made affidavit that he was not worth forty pounds over and above his debts, wearing apparel, and the tools of his trade. But, nevertheless, it was ordered by De Lancey that he might be admitted to bail in four hundred pounds with two sureties, each for two hundred pounds. Zenger says, "And as this was Ten Times more, than was in my Power to counter-secure any Person in giving Bail for me, I conceived I could not ask any to become my Bail on these Terms; and I returned to Goal, where I lay until *Tuesday*, the 28*th* of *January*, 1734, 5; . . . . and the Grand Jury having found nothing against me, I Expected to have been discharged from my Imprisonment; But my Hopes proved vain; for the Attorney General then charged me by *Information*, for Printing

and publishing Parts of my Journals No. 13 and 23 as being *false, scandalous, malicious, and seditious.*"

There was no attempt made to justify DeLancey's arbitrary refusal to admit Zenger to reasonable bail. It was done in the hope that if he was imprisoned the "Journal" would be discontinued. No further action was taken until the 15th of April, when Alexander and Smith, in behalf of Zenger, offered the following exceptions to the commissions of DeLancey and Philipse:

"1*st.* For that the Authority of a Judge of the King's Bench, in that Part of *Great Britain* called *England*, by which the Cognizance of this Cause is claimed, is by the said Commission granted to the Honourable *James DeLancey*, Esq; aforesaid, only *during Pleasure*; whereas that Authority (by a Statute in that Case made and provided) ought to be granted *during good Behaviour.*

2*d.* For that by the said Commission, the Jurisdiction and Authority of a Justice of the Court of Common Pleas at *Westminster*, in that Part of *Great Britain*, called *England*, is granted to the said *James DeLancey*, Esq; which Jurisdiction and Authority, cannot be granted to, and exercised by, anyone of the Justices of the King's Bench.

3*d.* For that the Form of the said Commission, is not founded on nor warranted by the Common Law, nor any Statute of *England*, nor of *Great Britain*, nor any Act of Assembly of this Colony.

4*th.* For that it appears by the Commission aforesaid, that the same is granted under the Seal of this Colony, by His Excellency, *William Cosby*,

Esq.; Governour thereof; and it appears not, that the same was granted, neither was the same granted, by and with the Advice and Consent of His Majesty's Council of this Colony; without which Advice and Consent, His Excellency could not grant the same."

Counsel then asked that their objection be filed. To which DeLancey said, "That they ought well to consider the Consequences of what they offered." To which they both replied they had well considered what they offered and all the consequences, and Smith added that he was so well satisfied with the right of the subject to take an exception to the commission of a judge, if he thought such commission illegal, that he dared venture his life on that point. Argument on the exceptions was postponed until Wednesday, the 16th, when counsel asked to be heard on,

1st. That the subject has a right to take such exceptions if they judge the commissions illegal.

2nd. That the exceptions tendered were legal and valid.

The Chief Justice then replied, "That they would neither hear nor allow the Exceptions; *for* (said he) *you thought to have gained a great Deal of Applause and Popularity by opposing this Court, as you did the Court of Exchequer; but you have brought it to that Point, That either,* We must go from the Bench or you from the Barr: *Therefore We exclude you and Mr.* Alexander *from the Barr.*" An order was then delivered to the clerk as follows:

"At a Supream Court of Judicature held for the

Province of *New-York* at the City Hall of the City of *New-York* on *Wednesday*, the 16*th* Day of *April*, 1735:

PRESENT,

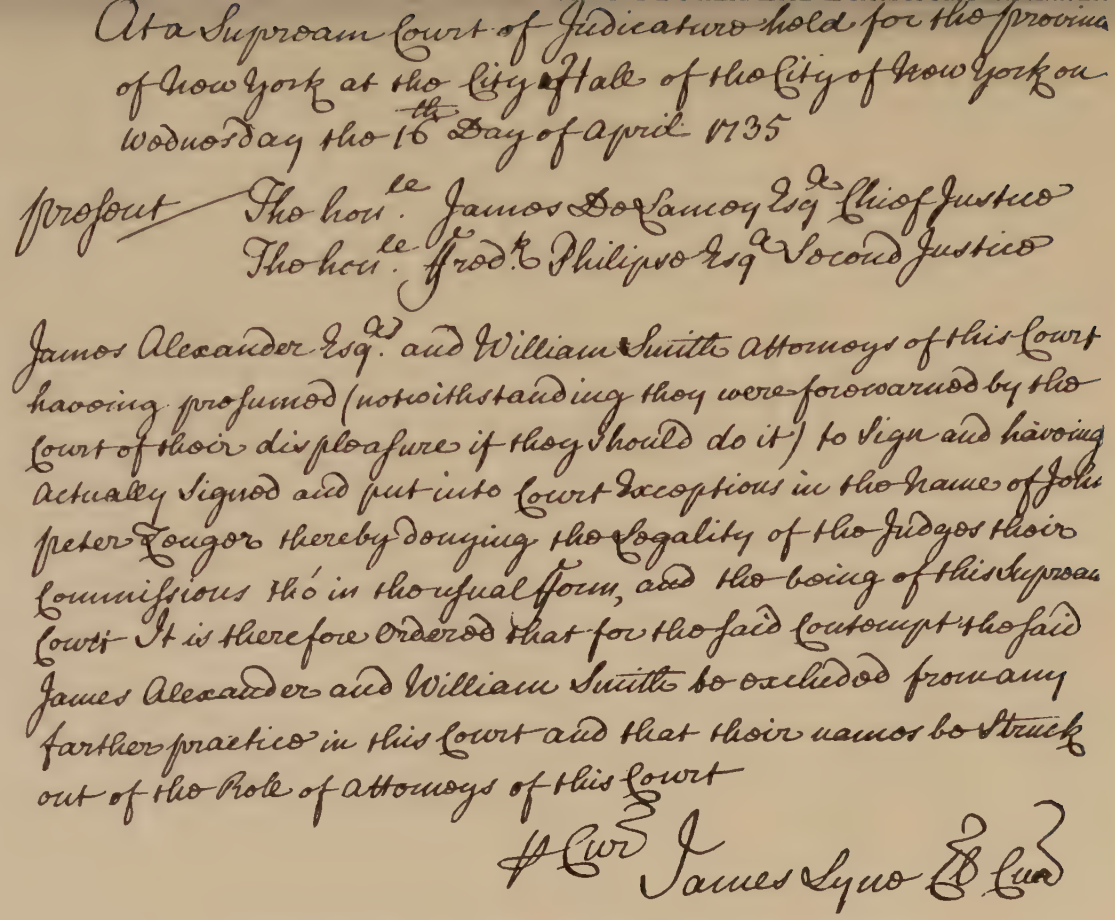
The Honourable *James DeLancey*, Esq.; Chief Justice.

The Honourable *Frederick Philipse*, Esq.; Second Justice.

James Alexander, *Esq.*, *and* William Smith, *Attornies of this Court, having presumed* (notwithstanding they were forewarned by the Court of their DISPLEASURE if they should do it) *to sign, and having actually signed, and put into Court, Exceptions, in the name of* John Peter Zenger; *thereby denying the Legality of the Judges their Commissions;* tho' *in the usual Form*, and the being of this Supreme Court. *It is therefore ordered, that for the said Contempt, the said* James Alexander, *and* William Smith, *be excluded from any farther Practice in this Court, and that their Names be struck out of the Roll of Attornies of this Court.*"

per Cur'. James Lyne, *Cl.*

After the order was read Alexander asked if it was the order of Justice Philipse as well as of the Chief Justice, that they might know how to have their relief. They both replied it was their order. Counsel then said that the court were mistaken in the wording of the order, that the exceptions were only to their commissions and not to the being of the court and asked that it might be altered accordingly. Smith said that the court might well exist



At a Supream Court of Judicature held for the Province of New York at the City Hall of the City of New York on Wednesday the 16th Day of April 1735

Present The hon.le James De Lancey Esq.r Chief Justice
The hon.le Fred.k Philipse Esq.r Second Justice

James Alexander Esq.r and William Smith Attorneys of this Court having presumed (notwithstanding they were forewarned by the Court of their displeasure if they should do it) to sign and having actually signed and put into Court Exceptions in the name of John Peter Zenger thereby denying the Legality of the Judges their Commissions tho' in the usual form, and the being of this Supream Court It is therefore Ordered that for the said Contempt the said James Alexander and William Smith be excluded from any farther practice in this Court and that their names be Struck out of the Role of Attorneys of this Court

P Cur James Lyne Cl. Cur

FACSIMILE OF DECREE OF COURT DISBARRING ALEXANDER AND SMITH.

though the commissions of all the judges were void, which the Chief Justice confessed to be true, but the order was not amended. It was then asked whether the court overruled or rejected the exceptions. The Chief Justice said that he did not understand the difference. To which it was replied that if they were rejected they could not appear upon the proceedings, but the defendant was entitled to have them made so by a bill of exceptions; if they overruled them they only declared them not sufficient to hinder them from proceeding by virtue of those commissions and the exceptions would remain as records of the court and ought to be entered on the record of the case as part of the proceedings.

The Chief Justice then replied, "They must remain upon the File, to warrant what we have done; as being Part of the Record of the Proceedings in that Cause, he said, you may speak to that Point tomorrow." But on the eighteenth the court would hear neither Alexander nor Smith insisting that they had said they could get some person to speak for them. Counsel also expressed a doubt as to whether they had been disbarred as attornies as well as counselors, but were informed by the court that their order meant to exclude them from their whole practice at the bar.

This remarkable order of disbarment well illustrates the intense and bitter partisanship which characterized the actions of the government party. It is the only instance in legal history of such an order being issued for such a reason. As Alexander and Smith said subsequently in their complaint to the Assembly:

"... We would humbly ask, whether any Thing can be more Arbitrary, than these Gentlemen's pretending to make the Notification of their *Displeasure* to be the Rule of our Conduct?"

"We ever thought it lawful for any of our Clients to bring the Commissions of the Judges to the Touchstone of the Law: But we never thought it so necessary as in this Case. We conceived the Innocency of our Client, no sufficient Security, while we esteemed the Governour his Prosecutor, who had his Judges in his Power. We had too much Reason for Caution from the Conduct of the Chief Justice. We heard, how His Honor had vented his Displeasure against him, when he accidentally met him in the Streets, on a *Sunday* before his Arrest. We had been near Witnesses to sundry warm Charges, and moving Addresses, to several Grand Juries, plainly levelled against *Zenger*, and with Intention to procure his Country to Indict him. And we saw his Name amongst that Committee of Council, which conferred with a Committee of this House, in order to procure a Concurrence to condemn some of *Zenger's Journals*, without giving him Opportunity to defend them. We heard that the Chief Justice was a principal Manager upon that Conference, and spoke much on that Occasion. We saw his name among those who issued that Order of the Council, which commanded the Magistrates of this City to attend the Burning of some of those *Journals;* and which sets forth; *that they had been condemned by the Council to be burnt by the Hands of the common Hangman.* We much doubted of the Lega-

lity of these Extraordinary Proceedings, of the Chief Justice, and the Rest of the Council. We saw the Chief Justice's Name, among those, who issued that Extraordinary Warrant, by which our Client was apprehended. We had seen his Want of Moderation, in demanding Security in *Eight Hundred Pounds*, when *Zenger* was brought before him, on his *Habeas Corpus*, tho' the Act only required Bail to be taken, *according to the Quality of the Prisoner, and the Nature of the Offence.* - - - - We had heard the Chief Justice declare, in the fullest Court we had ever seen in that Place, *That if a Jury found Zenger Not Guilty, they would be perjured*; or Words to that Effect; and even this before any Information in Form was lodged against him. As for Justice *Philipse*, we had been told, how vigorous and Active he had been, in the General Assembly, to procure the Concurrence of that House, with the Council, in the Order for Burning of *Zenger's* Papers; even before they were legally Condemned; and Addressing the Governour to issue a Proclamation with Promise of Reward for the Discovery of the Writers of them; and in an Order for Prosecuting the poor Printer. We wish we had no Occasion to repeat these Things, to shew the Motives of our Conduct; had we not been obliged thereto, in Order to vindicate our selves, we had much rather that they had been buried in Silence: But under these many Forewarnings, what could we, what ought we to do for our Client? Surely every Thing that was lawful and likely to contribute to his Safety. And in taking the Exception, we conceived some Benefit would accrue: For, had the Exception been

allowed, the Dependence of the Judges on the Governour (which we thought dangerous to our Client) would be in some Measure removed, and the Judges have stood more indifferent between the real Parties; Had it been over-ruled, yet we had Reason to think, that it might have proved some Check to an exorbitant Stretch of Power; because, That *dernier RESORT*, the Commissions had been judged illegal, any Abuse offered, after Exceptions taken, might have rendered the Judges, not only civilly, but criminally, answerable for their Conduct."

"It was then full *two and Thirty Years*, since one of us had first applied to the Study of Law (a Time near equal to the whole Age of either of these Judges) and who for several Years had been one of the oldest Practitioners at the Barr here; the other of us did not want *two* months of *Ten* Years standing there, and had a good Share of Practice for several Years, before either of these Judges were known to have had any knowledge of the Law, or pretended to have made it a Part of their Study. What has been our Character and Reputation for Ability, or Integrity, in our Practice, and Morals, belongs not to us to declare: But we hope, our being employed in almost all the Causes within this Colony, of any Importance, that have depended for several Years last past, may, as to those Points, in some Measure, witness in our Favour."

"That we were perfectly innocent, and did our Duty in the Case of *Zenger*, is what we have the clearest Sense of. That the Law was with us, *in the Right of the Subject to take an Exception*, is what we

will steadfastly maintain ; and challenge these Gentlemen to prove the Contrary. Had we err'd ; must a Man loose his Livelihood for an innocent Mistake? Must his Brains be beat out, because they are not cast in the same Mould with another Man's? Had we been guilty of *Contempt*, as is groundlessly pretended ; is there no Proportion between Offences ? Is there no Distinction between Punishments ? Must we be put to starve, or to seek our Bread in a new Country, or in a new Manner of Life, for one Contempt? If these Things are to be tolerated, . . . hard will be the case of Lawyers, who are sworn *To use their Offices according to their Learning and Discretion.* Yet, by this Rule, we must not be permitted the Use of either. Instead of consulting our Law Books, and doing what we think consistent therewith, for the Benefit of our Clients, we must study in GREAT MEN'S CAUSES, only *what will PLEASE the Judges, and what will most flatter Men in Power.*"

"We are loath to declare what we think these Gentlemen deserve : We wish their Amendment, not their Destruction. But we humbly request, that this House would come to such Resolutions upon this Case, as they shall think just and necessary, for the Preservation of the Rights and Liberties of the People ; and such Measures may be taken, as, that we may be restored to the Liberty of our Practice ; that our Clients may have that Service from us, which they have a Right to demand ; and the Publick Administration of Justice, that Help which we are able to afford ; and that we may have the Means of common Justice, for Recovering such Damages from the Gentle-

men as we have suffered, or shall suffer, until we are restored to our Employments."

The real reason for the order of disbarment was that by means of it the court party expected to be victorious at the trial as they well knew there were no attorneys in the Province who would be so vigorous and bold in defense of the printer as Alexander and Smith. John Chambers was assigned by the court as counsel for Zenger; he entered a plea of not guilty to the information but as Zenger says, "But as to the Point. *Whether my Exceptions should be a part of the Record - - - - thought not proper to speak to it.*"

Chambers then moved for a struck jury and a day for trial. The court allowed his motion for a jury and set the trial for August fourth. The clerk drew the jury on the evening of July 29th, and was attended by some of Zenger's friends. Instead of producing the freeholders' book, he made a list of forty-eight names which he said had been taken from the book. The list was objected to on behalf of Zenger as containing the names of many persons who were not freeholders, of others who were holding office at the Governors' pleasure, of some who had been defeated in the recent city election and of still others who "were the Governours' Baker, Taylor Shoemaker, Candlemaker, Joiner &c."

But in spite of these objections the clerk refused to strike the names out of the freeholders' book, nor would he hear objections to any of the persons on his list, saying the defendant could strike out any objectionable persons; to which it was replied there

would not be twelve men left, and by law they could only strike out twelve names. The following day, however, on motion the clerk was ordered to take forty-eight names from the freeholders' book as usual, and to allow of such objections as were just.

John Chambers was a young man without much experience in the law, and had been one of the signers of the address complimenting Cosby's administration, and was really affiliated with the court party. Accordingly Alexander and Smith had, immediately upon their disbarment, begun to look for a capable man to try the case. They first wrote to John Kinsey, a Pennsylvania attorney, and a prominent man in Philadelphia, but he replied, saying, "I have inclination enough to serve you in any just Cause in which I am at Liberty, but as I stand Circumstanced at Present And in the Case you mention I think, I cannot do it. Divers Letters have lately passed between the Governor and myself, which, tho' they do not relate to this Affair, are of such Import that I cannot undertake against him without subjecting myself to be reflected on as doing what is dishonorable. And for that Reason must desire your Excuse for not appearing in Zenger's Cause."

They then selected Andrew Hamilton, also of Philadelphia; and Lewis Morris, Jr., wrote to Alexander as follows about securing his services:

"On Saturday morning, according to my promise, I met at Smith's with Captain Norris, where I was in hopes of seeing you. We then talked of writing to Andrew Hamilton, which I consented to

do as well as Norris. Smith acquiesced with us. I think it absolutely necessary that he be wrote to to come to plead Zenger's cause. I declare to you I shall be willing to contribute my part to so Necessary an Expense, and if you think it of service that I subscribe the Letter you send joyntly with you and Smith, I hereby give you full power and Authority to affix my name when you and Smith have signed."

Andrew Hamilton had long been prominent in Pennsylvania affairs. He is said to have been born in Scotland in 1656. There is some uncertainty about his real name as at one time he was called Trent. He was Attorney General of Pennsylvania, 1717–26; Recorder of Philadelphia, 1727; Vice Admiralty Judge, 1737; Speaker of the Assembly from 1729 to 1739, with the exception of one year. He and Alexander had long been associates in many cases. In 1726 when Hamilton was in London probating the will of William Penn in Chancery, he wrote Alexander of the delays and difficulties of the practice, saying: "Could ye Devil be obliged to appear to a Bill of Chancery, and to bear ye Costs and attend ye Issue of ye Cause, I would for any ill turn he should do me, doom him to endure this Curse instead of going to Hell."

On being written to, Hamilton promptly expressed his willingness to come on and try the case. He was at that time nearly eighty years of age. He was a great sufferer from gout, and for a while it was quite uncertain whether he would be able to appear. His intellect, however, was vigorous and unclouded. He had the reputation of being the

best advocate in North America, and was probably the only American who was ever admitted a bencher of Gray's Inn.

CHAPTER III

THE TRIAL—ITS EFFECTS—ZENGER'S SUBSEQUENT CAREER

THE court party up to this time had in a certain way carried everything before it. Van Dam had not secured the payment of his debt from Cosby, Morris had been removed from the bench, Zenger's counsel were disbarred, Zenger himself was in prison and soon to be tried, and all these things had come about in an hitherto vain attempt to oppose the aggressions of arbitrary power. The situation was disheartening, indeed, to the leaders of the popular party. But, on the other hand, the "Journal" still made its appearance every Monday, the business being ably managed by Zenger's wife, who received her instructions from her husband through the hole in the door of his cell, and the spirit of the people raged more violently and with an increased bitterness as they realized how completely they were at the mercy of Cosby and his judges.

There were then considerably less than one thousand men in New York County possessing the

necessary qualifications for jury duty, so the articles in the "Journal" during Zenger's imprisonment were carefully written with the intention of thoroughly instructing all possible jurors not only on the real questions at issue, but also to acquaint them with their rights and duties in cases of libel.

The day appointed for the trial was August 4, 1735. The place, the City Hall, built in 1700, on the corner of Nassau and Wall streets, the finest building in the city. Long before the opening of the court the little room was crowded to its utmost capacity. Every class in the community was represented. The majority of the people felt that they had assembled not merely to witness the trial of the printer for libel, but that here the last fight was to be made against the administration which was so arbitrarily oppressive. If Zenger should be found guilty, surely their last hope of relief would be gone, they would be powerless to resist any hardship which their Governor might see fit to impose.

On the other hand, Zenger's acquittal would mean a decided check to the evils from which they suffered, a vindication of their demands and of the principles for which they contended, and would give them courage to continue their efforts to rid themselves of their despicable Governor. In fact, the result of the trial would be so far-reaching in its consequences, and of such momentous importance to every inhabitant of the Province, that it is doubtful if any trial ever held in America had a more thoroughly interested and attentive audience.

After the entry of the judges, clad in their dig-

nified court robes of the period and wearing their elaborate wigs, the following jury was obtained:

Thomas Hunt, Foreman,	Harmanus Rutgers,
Samuel Weaver,	Benjamin Hildreth,
Stanly Holmes,	Edward Man,
John Bell,	Andries Marschalk,
Egbert van Borsom,	Abraham Keteltas,
John Goelet,	Hercules Wendover.

As these men took their seats the leaders of the popular party must have had an intimation of their final success. Harmanus Rutgers had served on the first grand jury in January, 1734, while at least seven of the twelve were of Dutch ancestry; and though the old feeling of animosity on the part of the Dutch towards the English was practically extinguished, yet Cosby's conduct served to keep alive the few remaining sparks. If the way were pointed out, these men could be relied on for a favorable verdict for this reason alone.

The retention of Hamilton for Zenger's defense had been kept very quiet and was known to but few people. Consequently, his appearance in court produced a great dismay among Cosby's friends, and a corresponding degree of security in the popular party, as they had known that Chambers was unequal to the task imposed upon him. Hamilton was equipped with the careful study and research of Alexander and Smith, who sat near him in court, and a reference to Alexander's brief shows that Hamilton followed the line of defense there set forth. It

might have been supposed that the court, judging from its previous conduct, would have found some pretext for excluding Hamilton from the case, but on account of his reputation they did not dare to proceed to such an arbitrary length.

It has seemed proper to give the trial in detail, and it accordingly is given, using the text of the First Edition printed by Zenger in 1736. The only change from the printed text is that all reference to the matters and proceedings had before the trial and leading up to it, have been left out, as they are fully treated in other parts of this work.

The articles embodied in the Information were taken from Numbers 13 and 23 of the "Journal." It would be interesting to know who the authors of these articles were, but the only clew is to be found in their respective styles. Judged by this, the first was written by James Alexander, and the second by Lewis Morris.

The Attorney General opened the case by reading the Information.

Mr. *Attorney*. May it please Your Honours, and you Gentlemen of the Jury; the Information now before the Court, and to which the Defendant *Zenger* has pleaded *Not Guilty*, is an Information for printing and publishing *a false, scandalons and seditious Libel*, in which his Excellency the Governour of this Province, who is the King's immediate Representative here, is greatly and unjustly scandalized, as a Person that has no Regard to Law nor Justice; with much more, as will appear upon reading the Information. This of Libelling is what has

always been discouraged as a Thing that tends to create Differences among Men, ill Blood among the People, and oftentimes great Bloodshed between the Party Libelling and the Party Libelled. There can be no Doubt but you Gentlemen of the Jury will have the same ill Opinion of such Practices, as the Judges have always shewn upon such Occasions: But I shall say no more at the Time, until you hear the Information, which is as follows.

'*New-York*, Supream Court.

'of the Term of *January* in the Eighth Year 'of the Reign of our Sovereign Lord King 'GEORGE, the second, &c.

'*New-York*, ss. BE it remembered, That *Rich-* '*ard Bradley*, Esq; Attorney General of Our Sover- 'eign Lord the King, for the Province of *New-* '*York*, who for Our said Lord the King in this 'Part prosecutes, in his own proper Person comes 'here into the Court of Our said Lord the King 'and for our said Lord the King gives the Court 'here to understand, and be informed, That *John* '*Peter Zenger*, late of the City of *New-York*, 'Printer, (being a seditious Person, and a frequent 'Printer and Publisher of false News and seditious 'Libels, and wickedly and maliciously devising the 'Government of Our said Lord the King of this 'His Majesty's Province of *New-York*, under the 'Administration of His Excellency *William Cosby*, 'Esq; Captain General and Governour in Chief of 'the said Province, to traduce, scandalize and vilify, 'and His Excellency the said Governour, and the

THE

New-York Weekly JOURNAL.

Containing the freſheſt Advices, Foreign, and Domeſtick.

MUNDAY December 17, 1733.

Mr. Zenger;

I AM told your Encouragement has ſo far exceeded your Expectation, that you have ſold off almoſt three Editions of ſome of Your Papers.

In all publick Papers great Regard is to be had to Truth; but your No. V. *Article* New-York, Dec. 3d. *where it is ſaid,* That the Inhabitants of Cape *Brittoun* were diſtitute of Proviſions, and that to ſupply the Want of them the Sloop *Le Cæſar* was ſent hither, *did not meet with intire Credit, becauſe it was ſuppoſed to be taken from the* New-York Gazette, N. 422. *which, if I am rightly informed, is a Paper known to be under the Direction of the Government, in which the Printer of it is not ſuffered to inſert any Thing but what his Superiors approve of, under the Penalty of loſing* 50 L. per annum *Salary, and the Title of* The King's Printer for the Province of New-York. *I want Intent to give the Reaſons why that Paragraph was put into the* New-York Gazette, *nor whether to thoſe who diredted it Credit may be given to it, following Affidavits, that Paragraph is far from true. I have been favoured with the following Depoſitions which I ſend you with this to make publick, which I believe will be kindly received by your Readers. I have concealed the Name of the Magiſtrate before whom they were taken, becauſe, tho' it is common to take Affidavits without mentioning them, he might be ignorant of this Cuſtom.*

WILLIAM LIGGET late of *Boſton*, Mariner, aged about 22 Years, being duly ſworn on the holy Evangeliſts, on his Oath doth depoſeth, That ſome Time in *September* laſt he ſailed from *Boſton*, to *Cape Brittoun* in the Sloop *Five Brothers*, and arrived about the 4th of *October* at *Cape Brittoun*, *Amies Meſſereau* was then Maſter of the Sloop, who ſold the ſaid Sloop to *Captain* [illegible], that all the Time he was at *Cape Brittoun* [illegible] of no Scarcity of Proviſions, tho' he was aſſured at *Louiſburgh* every Day, until the Time they were coming away, and then they heard it only from the Gentlemen and People that came along with them in the Veſſel, which Veſſel is the ſaid Sloop *Five Brothers*, by the Name of *Le Cæſar*, that ſailed this Day from *New-York*: Says, he verily believes there was no Scarcity of Proviſions there, not only becauſe he heard nothing of it in *Louiſburgh*; but alſo while he was there, there came a Ship and a Brigantine from *Canada*, and a Scooner from *Piſcataway*, with Proviſions; and as they were coming out they ſpoke with a Sloop and a Brigantine from *Piſcataway* going into *Louiſburgh*, which he verily believes were carrying Proviſions, becauſe he ſaw live Stock on the Deck of the Sloop, and particularly a large Quantity of Sheep. And as to the Brigantine, the being deep Waiſted, he ſaw not what was on the Deck, but ſaw Hay on the Quarter-Deck. Says, that he heard *Louiſburgh* has been ſtrongly fortified by three Forts to hinder the coming in of Veſſels. Says, the firſt of theſe Forts they came within twenty Yards of both in going in and coming out, and has heard that Veſſels muſt come within leſs than one Hundred Yards of it, and thinks that Fort is able to ſink any Veſſel that can attempt to go in. The three Forts he heard were completed, and a Wall is now building round the Neck of Land on which *Louiſburgh* ſtands, and that it wanted about One Hundred Yards in Length of being finiſhed. Says, That during the Voyage from Cape *Brittoun* hither, a Gentleman, who he heard was called *James* was very buſy with a Chart, or Maps and ſays, that they made the Land about *Sandy* in coming hither, and that the Lead was kept going from about Ten Leagues from the Land till they came up to the City of *New-York*. Says, That there was one *Tarrant*, was Lieutenant Governor of Cape *Brittoun*, who ſhewed

B

‘ Ministers and Officers of Our said Lord the King of
‘ and for the said Province to bring into Suspicion
‘ and the ill Opinion of the Subjects of Our said
‘ Lord the King residing within the said Province)
‘ the Twenty-eighth Day of *January*, in the seventh
‘ Year of the Reign of Our Sovereign Lord *George*
‘ the second, by the Grace of God of *Great Britain*,
‘ *France* and *Ireland*, King, Defender of the Faith,
‘ &c. at the City of *New-York*, *did falsely*, *seditiously*
‘ *and scandalously* print and publish, and cause to be
‘ printed and published, a certain *false*, *malicious*, *se-*
‘ *ditious*, *scandalous* Libel, entituled *The New-York*
‘ *Weekly Journal*, *containing the freshest Advices for-*
‘ *eign and domestick*; in which Libel (of and concern-
‘ ing His Excellency the said Governour, and the
‘ Ministers and Officers of Our said Lord the King,
‘ of and for the said Province) among other Things
‘ therein contained are these Words, “ *Your Appear-*
“ *ance in Print at last*, gives a Pleasure to many, tho’
“ the most wish you had come fairly into the open
“ Field, and not appeared behind *Retrenchments* made
“ of the supposed Laws against Libelling, and of
“ what other Men have said and done before; these
“ *Retrenchments*, Gentlemen, may soon be shewn to
“ you and all Men to be weak, and to have neither
“ Law nor Reason for their Foundation, so cannot
“ long stand you in stead: Therefore, you had much
“ better as yet leave them, and come to what *the*
“ *People of this City and Province* (the City and Prov-
“ ince of *New-York* meaning) think are the Points
“ in Question (*to witt*) *They* (the People of the City
“ and Province of *New-York* meaning) *think as Mat-*

" *ters now stand, that their* LIBERTIES *and* PROP-
" ERTIES *are precarious, and that* SLAVERY *is like*
" *to be intailed on them and their Posterity, if some past*
" *Things be not amended, and this they collect from many*
" *past Proceedings.*" (Meaning many of the past Pro-
' ceedings of His Excellency the said Governour, and
' of the Ministers and Officers of our said Lord the
' King, of and for the said Province.) And said the
' Attorney General of Our said Lord the King, for
' Our said Lord the King, likewise gives the Court
' here to understand and be informed, that the said
' *John Peter Zenger* afterwards (*to wit*) the eighth Day
' of *April*, in the seventh Year of the Reign of Our
' said Lord the King, at the City of *New-York* afore-
' said, did *falsely, seditiously and scandalously* print and
' publish, and cause to be printed and published, an-
' other *false, malicious, seditious and scandalous* Li-
' bel, entituled *the New York Weekly Journal contain-*
' *ing the freshest Advices foreign and domestic.* In which
' Libel (of and concerning the Government of the
' said Province of *New-York*, and of and concerning
' His Excellency the said Governour, and the Minis-
' ters and Officers of Our said Lord the King, of and
' for the said Province) among other Things therein
' contained, are these Words, " *One of our Neighbors*
" (one of the Inhabitants of *New-Jersey* meaning)
" *being in Company, observing the Strangers* (some of the
" Inhabitants of *New-York* meaning) *full of Complaints,*
" *endeavoured to persuade them to remove into* Jersey ; *to*
" *which it was replied, that would be leaping out of the*
" *Frying Pan into the Fire ; for, says he, we both are*
" *under the same Governour* (His Excellency the said

" Governour meaning) *and your Assembly have shewn*
" *with a Witness what is to be expected from them; one*
" *that was then moving to* Pensilvania (meaning one
" that was then removing from *New-York*, with in-
" tent to reside at *Pensilvania*) *to which Place it is re-*
" *ported several considerable Men are removing* (from
" *New-York* meaning) *expressed in Terms very moving,*
" *much Concern for the Circumstances of* New-York (the
" bad Circumstances of the Province and People of
" *New-York* meaning) " *seemed to think them very much*
" *owing to the Influence that some Men* (whom he called
" *Tools*) *had in the Administration* (meaning the Ad-
" ministration of Government of the said Province
" of *New-York*) *said he was now going from them, and*
" *was not to be hurt by any Measures they should take,*
" *but could not help having some Concern for the Welfare*
" *of his Country-Men, and should be glad to hear that*
" *the Assembly* (meaning the General Assembly of the
" Province of *New-York*) *would exert themselves as be-*
" *came them, by shewing that they have the Interest of*
" *their Country more at Heart, than the Gratification of*
" *any private View of any of their Members, or being at*
" *all affected, by the Smiles or Frowns of a Governour*
" (His Excellency the said Governour meaning) *both*
" *which ought equally to be despised, when the Interest of*
" *their Country is at stake. You, says he, complain of*
" *the Lawyers, but I think the Law it self is at an End,*
" WE (the People of the Province of *New-York*
" meaning) SEE MENS DEEDS DESTROYED,
" JUDGES ARBITRARILY DISPLACED, NEW
" COURTS ERECTED WITHOUT CONSENT
" OF THE LEGISLATURE (within the Province

"*New-York*, meaning) BY WHICH IT SEEMS "TO ME, TRYALS BY JURIES ARE TAKEN "AWAY WHEN A GOVERNOUR PLEASES, "(His Excellency the said Governour meaning) "MEN OF KNOWN ESTATES DENIED "THEIR VOTES, CONTRARY TO THE RE- "CEIVED PRACTICE, THE BEST EXPOSI- "TOR OF ANY LAW: *Who is then in that Prov-* "*ince* (meaning the Province of *New-York*,) *that call* "(can call meaning) *any Thing his own, or enjoy any* "*Libery* (Liberty meaning) *longer than those in the* "*Administration* (meaning the Administration of Gov- "ernment of the said Province of *New-York*) *will* "*condescend to let them do it, for which Reason I have* "*left it*, (the Province of *New-York* meaning) *as I* "*believe more will.*" To the great Disturbance of 'the Peace of the said Province of *New-York*, to the 'Great Scandal of Our said Lord the King, of His 'Excellency the said Governor, and of all others con- 'cerned in the Administration of the Government of 'the said Province, and against the Peace of Our 'Sovereign Lord the King His Crown and Dignity, '&c. Whereupon the said Attorney General of Our 'said Lord the King, for Our said Lord the King, 'prays the Advisement of the Court here, in the 'Premises, and the due Process of the Law, against 'him the said *John Peter Zenger*, in this Part to be 'done, to answer to Our said Lord the King of and 'in the Premises, &c.

'*R. Bradley*, Attorney General.

To this Information the Defendant has pleaded *Not Guilty*, and we are ready to prove it.

Mr. Chambers *has not been pleased to favour me with his Notes, so I cannot, for fear of doing him Injustice, pretend to set down his Argument; But here Mr.* Chambers *set forth very clearly the Nature of a Libel, the great Allowances that ought to be made for what Men speak or write, That in all Libels there must be some particular Persons so clearly pointed out, that no Doubt must remain about who is meant; That he was in hopes* Mr. Attorney *would fail in his Proof, as to this Point; and therefore desired that he would go on to examine his Witnesses.*

Then Mr. *Hamilton*, who at the Request of some of my Friends, was so kind as to come from *Philadelphia* to assist me on the Tryal, spoke.

Mr. Hamilton. May it Please your Honour; I am concerned in this Cause on the Part of Mr. Zenger the Defendant. The Information against my Client was sent me, a few Days before I left Home, with some Instructions to let me know how far I might rely upon the Truth of those Parts of the Papers set forth in the Information, and which are said to be libellous. And tho' I am perfectly of the Opinion with the Gentleman who has just now spoke, on the same Side with me, as to the common Course of Proceedings, I mean in putting Mr. Attorney upon proving, that my Client printed and published those Papers mentioned in the Information; yet I cannot think it proper for me (without doing Violence to my own Principles) to deny the Publication of a Complaint, which I think is the Right of every free-born Subject to make, when the Matters so published can be supported with Truth;

and therefore I'll save Mr. Attorney the Trouble of examining his Witnesses to that Point; and I do (for my Client) confess, that he both printed and published the two News Papers set forth in the Information, and I hope in so doing he has committed no Crime.

Mr. Attorney. Then if Your Honour pleases, since Mr. *Hamilton* has confessed the Fact, I think our Witnesses may be discharged; we have no further Occasion for them.

Mr. Hamilton. If you brought them here, only to prove the Printing and Publishing of these News Papers, we have acknowledged that, and shall abide by it.

Here my Journeyman and two Sons (with several others subpoena'd by Mr. Attorney, to give Evidence against me) were discharged, and there was Silence in the Court for some Time.

Mr. Chief Justice. *Well Mr. Attorney, will you proceed?*

Mr. Attorney. Indeed, Sir, as Mr. *Hamilton* has confessed the Printing and Publishing these Libels, I think the Jury must find a Verdict for the King; for supposing they were true, the Law says that they are not the less libellous for that; nay indeed the Law says, their being true is an Aggravation of the Crime.

Mr. Hamilton. Not so neither, Mr. Attorney, there are two Words to that Bargain. I hope it is not our bare Printing and Publishing a Paper, that will make it a Libel: You will have something more to do, before you make my Client a Libeller;

for the Words themselves must be libellous, that is, *false, scandalous, and seditious*, or else we are not guilty.

As Mr. Attorney has not been pleased to favour us with his Argument, which he read, or with the Notes of it, we cannot take upon us to set down his Words, but only to show the Book Cases he cited, and the general Scope of his Argument, which he drew from those Authorities. He observed upon the Excellency, as well as Use of Government, and the great Regard and Reverence, which had been constantly paid to it, both under the Law and the Gospel. That by Government we were protected in our Lives, Religion and Properties; and that for these Reasons, great Care had always been taken to prevent every Thing that might tend to scandalize Magistrates, and others concerned in the Administration of the Government, especially the supreme Magistrate. And that there were many Instances of very severe Judgments, and of Punishments inflicted upon such, as had attempted to bring the Government into Contempt; by publishing false and scurrilous Libels against it, or by speaking evil and scandalous Words of Men in Authority; to the great Disturbance of the publick Peace. And to support this, he cited, 5 Coke 121. (Suppose it should be 125.) Wood's Instit. 430. 2 Lilly 168. 1 Hawkins 73. 11. 6. *From these Books he insisted, that a Libel was a malicious Defamation of any Person, expressed either in Printing or Writing, Signs or Pictures, to asperse the Reputation of one that is alive, or the Memory of one that is dead; if he is a private Man, the Libeller deserves a severe Punishment, but if it is against a Magistrate or other publick Person, it is a*

greater Offence; for this concerns not only the Breach of the Peace, but the Scandal of the Government; for what greater Scandal of Government can there be, than to have corrupt or wicked Magistrates to be appointed by the King, to govern his Subjects under him? And a greater Imputation to the State cannot be, than to suffer such corrupt Men to sit in the sacred Seat of Justice, or to have any Medling in, or concerning the Administration of Justice: And from the same Books Mr. Attorney insisted, that whether the Person defamed is a private Man or a Magistrate, whether living or Dead, whether the Libel is true or false, or if the Party against whom it is made is of good or evil Fame, it is nevertheless a Libel: For in a settled State of Government, the Party grieved ought to complain for every Injury done him, in the ordinary Course of the Law. And as to its Publication, the Law had taken so great Care of Men's Reputations, that if one maliciously repeats it, or sings it, in the Presence of another, or delivers the Libel or a Copy of it over, to scandalize the Party, he is to be punished as a Publisher of a Libel. He said it was likewise evident, that Libelling was an Offence against the Law of God. Act. XXIII. 5. Then said *Paul,* I wist not, Brethren, that he was the High Priest: For it is written, thou shalt not speak evil of the Ruler of the People. 2 *Pet. X.* 11. Despise Government, presumptuous are they, self willed, they are not afraid to speak evil of Dignities, &c. *He then insisted that it was clear, both by the Law of God and Man, That it was a very great Offence to speak evil of, or to revile those in Authority over us; and that Mr. Zenger had offended in a most notorious and gross*

Manner, in scandalizing His Excellency our Governour, who is the King's immediate Representative, and the supream Magistrate of this Province: For can there be any Thing more scandalous said of a Governour than what is published in those Papers? Nay, not only the Governour, but both the Council and Assembly are scandalized; for there it is plainly said, That as Matters now stand, their Liberties and Properties are precarious, and that Slavery is like to be entailed on them and their Posterity. *And then again Mr.* Zenger *says,* The Assembly ought to despise the Smiles or Frowns of a Governour; That he thinks the Law is at an end; That we see Men's Deeds destroyed, Judges arbitrarily displaced, new Courts erected, without Consent of the Legislature; *And* That it seems Tryals by Juries are taken away when a Governour pleases; That none can call any Thing their own, longer than those in the Administration will condescend to let them do it. . . . *And Mr. Attorney added, that he did not know what could be said in Defense of a Man, that had so notoriously scandalized the Governour and principal Magistrates and Officers of the Government, by charging them with depriving the People of their Rights and Liberties, and taking away Tryals by Juries, and in short; putting an End to the Law itself. . . . If this was not a Libel, he said, he did not know what was one. Such Persons as will take those Liberties with Governours and Magistrates, he thought ought to suffer for stirring up Sedition and Discontent among the People. And concluded by saying, that the Government had been very much traduced and exposed by Mr.* Zenger *before he was taken Notice of;*

that at last it was the Opinion of the Governour and Council, that he ought not to be suffered to go on, to disturb the Peace of the Government; by publishing such Libels against the Governour, and the chief Persons in the Government; And therefore they had directed this Prosecution, to put a Stop to this scandalous and wicked Practice, of libelling and defaming his Majesty's Government and disturbing his Majesty's Peace.

Mr. Chambers *then sum'd up to the Jury, observing with great Strength of Reason on Mr. Attorney's Defect of Proof, that the Papers in the Information were* False, Malicious or Seditious, *which was incumbent on him to prove to the Jury, and without which they could not on their Oaths say,* That they were so, as charged.

Mr. *Hamilton.* May it please Your Honour; I agree with Mr. Attorney, that Government is a sacred Thing, but I differ very widely from him when he would insinuate, that the just Complaints of a Number of Men, who suffer under a bad Administration, is libelling that Administration. Had I believed that to be Law, I should not have given the Court the Trouble of hearing any Thing that I could say in this cause. I own, when I read the Information, I had not the Art to find out (without the Help of Mr. Attorney's *Innuendo's*) that the Governor was the Person meant in every Period of that News Paper; and I was inclined to believe, that they were wrote by some, who from an extraordinary Zeal for Liberty, had misconstrued the Conduct of some Persons in Authority into Crimes; and that Mr. Attorney out of his too great Zeal for Power, had exhibited this Information, to correct the Indiscretion of

my Client; and at the same Time, to shew his Superiors the great Concern he had, lest they should be treated with any undue Freedom. But from what Mr. Attorney has just now said, *to wit*, That this Prosecution was directed by the Governour and Council, and from the extraordinary Appearance of People of all Conditions, which I observe in Court upon this Occasion, I have Reason to think, that those in the Administration have by this Prosecution some-thing more in View, and that the People believe they have a good deal more at Stake, than I apprehended: And therefore, as it is become my Duty, to be both plain and particular in this Cause, I beg Leave to bespeak the Patience of the Court.

I was in Hopes, as that terrible Court, where those dreadful Judgments were given, and that Law established, which Mr. Attorney has produced for Authorities to support this Cause, was long ago laid aside, as the most dangerous Court to the Liberties of the People of *England*, that ever was known in that Kingdom; that Mr. Attorney knowing this, would not have attempted to set up a Star-Chamber here, nor to make their Judgments a Precedent to us: For it is well known, that what would have been judg' d Treason in those Days for a Man to speak, I think, has since not only been practiced as lawful, but the contrary Doctrine has been held to be Law.

In *Brewster's* Case, for printing, *That the Subjects might defend their Rights and Liberties by Arms, in case the King should go about to destroy them*, he was told by the Chief Justice that it was a great

Mercy, he was not proceeded against for his Life; for that to say, the King could be resisted by Arms in any Case whatsoever, was express Treason. And yet we see since that Time, Dr. *Sacheverell* was sentenced in the highest Court in *Great Britain*, for saying, *That such a Resistance was not lawful.* Besides, as Times have made very great Changes in the Laws of *England*, so in my Opinion there is good Reason that Places should do so too.

Is it not surprising to see a Subject, upon his receiving a Commission from the King to be a Governor of a Colony in *America*, immediately imagining himself to be vested with all the Prerogatives belonging to the sacred Person of his Prince? And which is yet more astonishing, to see that a People can be so wild as to allow of, and acknowledge those Prerogatives and Exemptions, even to their own Destruction? Is it so hard a Matter to distinguish between the Majesty of our Sovereign, and the Power of a Governor of the Plantations? Is not this making very free with our Prince, to apply that Regard, Obedience and Allegiance to a Subject which is due only to Our Sovereign? And yet in all the Cases which Mr. Attorney has cited, to show the Duty and Obedience we owe to the Supreme Magistrate, it is the King that is there meant and understood, tho' Mr. Attorney is pleased to urge them as Authorities to prove the Heinousness of Mr. *Zenger's* offence against the Governor of *New-York*. The several Plantations are compared to so many large Corporations, and perhaps not improperly; and can any one give an Instance, that the

Mayor or Head of a Corporation, ever put in a Claim to the sacred Rights of Majesty? Let us not (while we are pretending to pay a great Regard to our Prince and His Peace) make bold to transfer that Allegiance to a Subject, which we owe to our King only. What strange Doctrine is it, to press every Thing for Law here which is so in *England?* I believe we should not think it a Favour, at present at least, to establish this Practice. In *England* so great a Regard and Reverence is had to the Judges,* that if any man strike another in *Westminster Hall*, while the Judges are sitting, he shall lose his Right Hand, and forfeit his Land and Goods, for so doing. And tho' the Judges here claim all the Powers and Authorities within this Government, that a Court of King's Bench has in *England*, yet I believe Mr. Attorney will scarcely say, that such a Punishment could be legally inflicted on a Man for committing such an Offence, in the Presence of the Judges sitting in any Court within the Province of *New-York*. The Reason is obvious; a Quarrel or Riot in *New-York* cannot possibly be attended with those dangerous Consequences that it might in *Westminster Hall;* nor (I hope) will it be alledged, than any Misbehaviour to a Governor in the Plantations will, or ought to be, judged of or punished, as a like Undutifulness would be, to Our Sovereign. From all which, I hope Mr. Attorney will not think it proper to apply his Law-Cases (to support the Cause of his Governor) which have only been judged, where the King's Safety or Honour was concerned.

*C. 3 *Inst.* 140.

It will not be denied but that a Freeholder in the Province of *New-York* has as good a Right to the sole and separate Use of his Lands, as a Freeholder in *England*, who has a Right to bring an Action of Trespass against his Neighbour, for suffering his Horse or Cow to come and feed upon his Land or eat his Corn, whether inclosed or not inclosed; and yet I believe it would be looked upon as a strange Attempt, for one Man here, to bring an Action against another, whose Cattle and Horses feed upon his Grounds not inclosed, or indeed for eating and treading down his Corn, if that were not inclosed. Numberless are the Instances of this Kind that might be given, to shew, that what is good Law at one Time and in one Place, is not so at another Time and in another Place; so that I think, the Law seems to expect, that in these Parts of the World Men should take Care, by a good Fence, to preserve their Property, from the Injury of unruly Beasts. And perhaps there may be as good Reason why Men should take the same Care, to make an honest and upright Conduct a Fence and Security against the Injury of unruly Tongues.

Mr. Attorney. I don't know what the Gentleman means, by comparing Cases of Freeholders in *England* with the Freeholders here. What has this Case to do with Actions of Trespass, or Men's Fencing their Ground? The Case before the Court is, whether Mr. *Zenger* is guilty of Libelling His Excellency the Governor of *New-York*, and indeed the whole Administration of the Government? Mr. *Hamilton* has confessed the Printing and Publishing,

and I think nothing is plainer, than that the Words in the Information are *scandalous, and tend to sedition, and to disquiet the Minds of the People of this Province.* And if such Papers are not Libels, I think it may be said, there can be no such Thing as a Libel.

Mr. Hamilton. May it please Your Honour; I cannot agree with Mr. Attorney: For tho' I freely acknowledge, that there are such Things as Libels, yet I must insist at the same Time, that what my Client is charged with, is not a Libel; and I observed just now, that Mr. Attorney in defining a Libel, made use of the Words, *scandalous, seditious, and tend to disquiet the People;* but (whether with Design or not I will not say) he omitted the Word *false.*

Mr. Attorney. I think I did not omit the Word *false:* But it has been said already, that it may be a Libel, notwithstanding it may be true.

Mr. Hamilton. In this I must still differ with Mr. Attorney; for I depend upon it, we are to be tried upon this Information now before the Court and Jury, and to which we have pleaded *Not Guilty,* and by it we are charged with Printing and publishing *a certain false, malicious, seditious and scandalous Libel.* This Word *false* must have some Meaning, or else how came it there? I hope Mr. Attorney will not say, he put it there by Chance, and I am of Opinion his Information would not be good without it. But to shew that it is the principal Thing which, in my Opinion, makes a Libel, I put the Case, the Information had been for printing and publishing a certain *true* Libel, would that be the

same thing? Or could Mr. Attorney support such an Information by any Precedent in the *English* Law? No, the Falsehood makes the Scandal, and both make the Libel. And to shew the Court that I am in good Earnest, and to save the Court's Time, and Mr. Attorney's Trouble, I will agree, that if he can prove the Facts charged upon us, to be *false*, I'll own them to be *scandalous*, *seditious*, and *a Libel*. So the Work seems now to be pretty much shortened, and Mr. Attorney has now only to prove the Words *false*, in order to make us Guilty.

Mr. Attorney. We have nothing to prove; you have confessed the Printing and Publishing; but if it was necessary (as I insist it is not) how can we prove a Negative? But I hope some Regard will be had for the Authorities that have been produced, and that supposing all the Words to be true, yet that will not help them, that Chief Justice *Holt* in his Charge to the Jury, in the Case of *Tutchin*, made no Distinction, whether *Tutchin's* Papers were *true* or *false;* and as Chief Justice *Holt* has made no Distinction in that Case, so none ought to be made here; nor can it be shewn in all that Case, there was any Question made about their being *false* or *true*.

Mr. Hamilton. I did expect to hear, That a Negative cannot be proved; but every Body knows there are many Exceptions to that general Rule: For if a Man is charged with killing another, or stealing his Neighbour's Horse, if he is innocent in the one Case, he may prove the Man said to be

killed, to be really alive; and the Horse said to be stolen, never to have been out of his Master's Stable. &c., and this, I think, is proving a Negative. But we save Mr. Attorney the Trouble of proving a Negative, and take the *Onus probandi* upon ourselves, and prove those very Papers that are called Libels to be *true*.

Mr. Ch. Justice. You cannot be admitted, Mr. *Hamilton*, to give the Truth of a Libel in Evidence. A Libel is not to be justified; for it is nevertheless a Libel that it is true.

Mr. Hamilton. I am sorry the Court has so soon resolved upon that Piece of Law; I expected first to have been heard to that Point. I have not in all my Reading met with an Authority that says, we cannot be admitted to give the Truth in Evidence, upon an information for a Libel.

Mr. Ch. Justice. The Law is clear, That you cannot justify a Libel.

Mr. Hamilton. I know that, may it please Your Honour, to be so; but, with Submission, I understand the Word, *justify*, there, to be a justification by Plea, as it is in the Case upon an Indictment for *Murder*, or an *Assault and Battery;* there the Prisoner cannot justify, but plead *Not Guilty:* Yet it will not be denied that he may, and always is admitted, to give the Truth of the Fact, or any other Matter, in Evidence, which goes to his Acquital; as in Murder, he may prove it was in Defence of his Life, his House, &c., and in Assault and Battery, he may give in Evidence, that the other Party struck first, and in both Cases he will be acquitted. And

in this Sense I understand the Word *justify*, when applied to the Case before the Court.

Mr. Ch. Justice. I pray shew that you can give the Truth of a Libel in Evidence.

Mr. Hamilton. I am ready, both from what I understand to be the Authorities in the Case, and from the Reason of the Thing, to shew that we may lawfully do so. But here I beg leave to observe, That Informations for Libels is a Child, if not born, yet nursed up, and brought to full Maturity, in the Court of Star-Chamber.

Mr. Ch. Justice. Mr. *Hamilton*, you'll find your self mistaken ; for in *Coke's Institutes* you'll find Informations for Libels, long before the Court of Star-Chamber.

Mr. Hamilton. I thank Your Honour ; that is an Authority I did propose to speak to by and by : But as you have mention'd it, I'll read that Authority now. I think it is in 3 *Co. Inst.* under Title *Libel;* it is the Case of *John de Northampton* for a Letter wrote to *Robert de Ferrers*, one of the King's privy Council,* concerning Sir *William Scot*, Chief Justice, and his Fellows ; but it does not appear to have been upon Information ; and I have good Grounds to say it was upon Indictment, as was the Case of *Adam de Ravensworth*, just mentioned before by Lord *Coke* under the same Title ; and I think there cannot be a greater, at least a plainer Authority for us, than the Judgment in the Case of *John de Northampton*, which my Lord has set down at large. *Et quia praedictus Johannes cognovit dictam Litteram*

* *Coke* 3 *Inst.* 174.

per se scriptam Roberto de Ferrers, qui est de Concilio Regis, qua litera continet in se nullam veritatem, &c. Now Sir, by this Judgment it appears the libellous Words were utterly false, and there the Falsehood was the Crime, and is the Ground of that Judgment: And is not that what we contend for? Do not we insist that the Falsehood makes the Scandal, and both make the Libel? And how shall it be known whether the Words are libellous, *that is*, *true* or *false*, but by admitting us to prove them *true*, since Mr. Attorney will not undertake to prove them *false?* Besides, is it not against common Sense, that a Man should be punished in the same Degree for a *true Libel* (if any such Thing could be) as for a *false one?* I know it is said, *That Truth makes a Libel the more provoking, and therefore the Offense is the greater, and consequently the Judgment should be the heavier.* Well, suppose it were so, and let us agree for once, *That Truth is a greater Sin than Falsehood;* Yet as the Offenses are not equal, and as the Punishment is arbitrary, *that is*, according as the Judges in their Discretion shall direct to be inflicted; is it not absolutely necessary that they should know, whether the Libel is *true* or *false*, that they may by that Means be able to proportion the Punishment? For, would it not be a sad Case, if the Judges, for want of a due Information, should chance to give as severe a Judgment against a Man for writing or publishing a Lie, as for writing or publishing a Truth? And yet this (with submission) as monstrous and ridiculous as it may seem to be, is the natural Consequence of Mr. Attorney's Doctrine, *That Truth makes a worse Libel than Falsehood*, and

must follow from his not proving our Papers to be *false*, or not suffering us to prove them to be *true*. But this is only reasoning upon the Case, and I will now proceed to shew, what in my Opinion will be sufficient to induce the Court, to allow us to prove the Truth of the Words, which in the Information are called libellous. And first, I think there cannot be a greater Authority for us, than the Judgment I just now mentioned, in the Case of *John de Northampton*, and that was in early Times, and before the Star Chamber came to its Fulness of Power and Wickedness. In that Judgment, as I observed, the *Falsehood* of the Letter which was wrote, is assigned as the very Ground of the Sentence. And agreeable to this it was urged by Sir *Robert Sawyer*,* in the Tryal of the Seven Bishops, *That the Falsity, the Malice, and Sedition of the Writing, were all Facts to be proved.* But here it may be said, Sir *Robert* was one of the Bishop's Council, and his Argument is not to be allowed for Law: But I offer it only to shew that we are not the first who have insisted, that to make a Writing a Libel, it must be *false*. And if the Argument of a Council must have no Weight, I hope there will be more Regard shewn to the Opinion of a Judge, and therefore I mention the Words of Justice *Powel* in the same Tryal, where he says (of the Petition of the Bishops, which was called a Libel, and upon which they were persecuted by Information), That *to make it a Libel, it must be false and malicious, and tend to Sedition;* and declared, *as he saw no Falsehood or Malice in it, he was of Opinion, that it was no Libel.*

* *State Tryals*, Vol. 4.

Now I should think this Opinion alone, in the Case of the King, and in a Case which that King had so much at Heart, and which to this Day has never been contradicted, might be a sufficient Authority, to entitle us to the Liberty of proving the *Truth* of the Papers, which in the Information are called *false, malicious, seditious and scandalous.* If it be objected, *that the Opinions of the other three Judges were against him,* I answer, That the Censures the Judgments of these Men have undergone, and the Approbation Justice *Powel's* Opinion, his judgment and Conduct upon that Tryal has met with, and the Honour he gained to himself, for daring to speak Truth at such a Time, upon such an Occasion, and in the Reign of such a King, is more than sufficient, in my humble Opinion, to warrant our insisting on his Judgment, as a full Authority to our Purpose, and it will lye upon Mr. Attorney to shew, that this Opinion has since that Time been denied to be Law, or that Justice *Powel* who delivered it, has ever been condemned or blamed for it, in any Law-Book extant at this Day, and this I will venture to say, Mr. Attorney cannot do. But to make this Point yet more clear, if any Thing can be clearer, I will on our Part proceed and shew, that in the Case of Sir *Samuel Barnardiston,* his Council, notwithstanding he stood before one of the greatest Monsters that ever presided in an *English* Court (Judge *Jefferies*), insisted on the Want of Proof to the *Malice* and *seditious Intent* of the Author, of what was called a *Libel.* And in the Case of *Tutchin,* which seems to be Mr. Attorney's chief Authority,

State Tryals, Vol. V. 549.

that Case is against him; for he was upon his Tryal put upon shewing the Truth of his Papers, but did not, at least the Prisoner was asked, by the King's Council whether he would say they were *true?* And as he never pretended, that they were true, the Chief Justice was not to say so. But the Point will still be clearer on our Side from *Fuller's* Case, *For falsly and wickedly causing to be printed a false and scandalous Libel, in which (amongst other Things) were contained these Words,* '*Mr.* Jones *has also made Oath, That* '*he* '*paid* L. 5,000. *more by the late King's Order, to sev-* '*eral Persons in Places of Trust, that they might com-* '*pleat my Ruin, and invalidate me for ever. Nor is this* '*all; for the same Mr.* Jones *will prove by undeniable* '*Witness and Demonstration, that he has distributed more* '*than* L. 180,000. *in Eight Years last past, by the French* '*King's Order, to Persons in publick Trust in this King-* '*dom.*' Here you see is a scandalous and infamous Charge against the late King; here is a Charge no less than High Treason against the *Men in publick Trust,* for receiving Money of the *French King,* then in actual War with the Crown of *Great Britain;* and yet the Court were far from bearing him down with that Star-Chamber Doctrine, *to wit, That it was no matter, whether what he said was true or false;* no, on the contrary, Lord Chief Justice *Holt* asks *Fuller, Can you make it appear, they are true? Have you any Witnesses? You might have had* Subpoena's *for your Witnesses against this day. If you take upon you to write such Things as you are charged with, it lies upon you to prove them true, at your Peril. If you have any Wit-*

State Tryals, Vol. V. 445.

Richard Bradley Esq. His Majesties Attorney Genl. for the Province of New York for his behalf of his Said Majesty Complainant

Benjamin Birdsil & others Defendant

In Chancery

To His Excellency William Cosby Esq. Captain General & Govr. in Chief of the Provinces of New York New Jersey & Territories thereon Depending in America Vice Admiral & Chancellor of the Same & Collo. in his Majesties Army &c.

The Humble Petition of the Compl.

Sheweth

That Your Petitioner for and on behalf of His Majesty Sometime Since fyled a Bill of Complaint in this Honourable Court agt. Benjamin Birdsill & others the Defendts. to which Bill the Said Benjamin Birdsil John Thomas, James Alexander, Callwallader Colden, Abraham Vanhorne Isaac Hicks, William Smith Jacobus Bruyn, Vincent Mathews and William Forster Appeared, & were Soon after Served with a Rule to Answer the Said Bill, But instead thereof have fyled Exceptions to the power of your Excellency to give Relief upon the Said Bill being in its Nature a plea to the Jurisdiction of this Honble. Court.

Your Petitioner therefore Humbly Prays your Excellency to Appoint a Short day for the hearing the Said Exceptions or plea And Your Petitioner as in Duty bound Shall pray &c.

Let the hearing of the Exceptions be on Thursday the fifth June Next at Nine a Clock in the Morning

[illegible]

DOCUMENT WITH SIGNATURE OF GOVERNOR COSBY.

nesses I will hear them. How came you to write those books which are not true? If you have any Witnesses, produce them. If you can offer any Matter to prove what you have wrote, let us hear it. Thus said, thus did, that great Man Lord Chief Justice *Holt*, upon a Tryal of the like Kind with ours, and the Rule laid down by him in this Case is, *That he who will take upon him to write Things, it lies upon him to prove them at his Peril.* Now, Sir, we have acknowledged the Printing and Publishing of those Papers, set forth in the Information, and (with the Leave of the Court) agreeable to the Rule laid down by Chief Justice *Holt*, we are ready to prove them to be true, at our Peril.

Mr. Ch. Justice. Let me see the book.

Here the Court had the case under Consideration, a considerable Time, and every one was silent.

Mr. Ch. Just. Mr. Attorney, you have heard what Mr. *Hamilton* has said, and the Cases he has cited, for having his Witnesses examined, to prove the Truth of the several Facts contained in the Papers set forth in the Information, what do you say to it?

Mr. Attorney. The Law in my opinion is very clear; they cannot be admitted to justify a Libel; for, by the Authorities I have already read to the Court, it is not the less a Libel because it is true. I think I need not trouble the Court with reading the Cases over again; the Thing seems to be very plain, and I submit it to the Court.

Mr. Ch. Just. Mr. *Hamilton*, the Court is of the Opinion, you ought not to be permitted to prove the Facts in the Papers: these are the Words of the Book. '*It is far from being a Justification of a Libel,*

'*that the Contents thereof are true, or that the Person* '*upon whom it is made, had a bad Reputation, since the* '*greater Appearance there is of Truth in any malicious* '*Invective, so much the more provoking it is.*

Mr. Hamilton. These are Star Chamber Cases, and I was in hopes, that Practice had been dead with the Court.

Mr. Ch. Just. Mr. *Hamilton*, the Court have delivered their Opinion, and we expect you will use us with good Manners; you are not to be permitted to argue against the Opinion of the Court.

Mr. Hamilton. With Submission, I have seen the Practice in very great Courts, and never heard it deemed unmannerly to - - - - - -

Mr. Ch. Just. After the Court have declared their Opinion, it is not good Manners to insist upon a Point, in which you are over-ruled.

Mr. Hamilton. I will say no more at this Time; the Court I see is against us in this Point; and that I hope I may be allowed to say.

Mr. Ch. Just. Use the Court with good Manners, and you shall be allowed all the Liberty you can reasonably desire.

Mr. Hamilton. I thank your Honour. Then, Gentlemen of the Jury, it is to you we must now appeal, for Witness, to the Truth of the Facts we have offered, and are denied the Liberty to prove; and let it not seem strange, that I apply my self to you in this Manner, I am warranted so to do, both by Law and Reason. The Last supposes you to be summoned, *out of the Neighbourhood where the Fact is alleged to be committed;* and the Reason of your being taken out

of the Neighbourhood is, *because you are supposed to have the best Knowledge of the fact that is to be tried.* And were you to find a Verdict against my client, you must take upon you to say, the Papers referred to in the Information, and which we acknowledge we printed and published, are *false, scandalous and seditious:* but of this I can have no Apprehension. You are Citizens of *New-York;* you are really what the Law supposes you to be, *honest and lawful Men;* and, according to my Brief, the Facts which we offer to prove were not committed in a Corner; they are notoriously known to be true; and therefore in your Justice lies our Safety. And as we are denied the Liberty of giving Evidence, to prove the Truth of what we have published, I will beg Leave to lay it down as a standing Rule in such Casess, *That the suppressing of Evidence ought always to be taken for the strongest Evidence;* and I hope it will have that Weight with you. But since we are not admitted to examine our Witnesses, I will endeavor to shorten the Dispute with Mr. Attorney, and to that End, I desire he would favor us with some Standard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or not.

Mr. Attorney. The Books, I think, have given a very full definition of a Libel; they say it is *in a strict Sense taken for a malicious Defamation, expressed either in Printing or Writing, and tending either to blacken the Memory of one who is dead, or the Reputation of one who is alive, and to expose him to publick Hatred, Contempt or Ridicule.* § ? *But it is said, That in a larger*

1 Hawk. Chap. LXXIII. § 1 & seq.

Sense the Notion of a Libel may be applied to any Defamation whatsoever, expressed either by Signs or Pictures, as by fixing up a Gallows against a Man's Door, or by painting him in a shameful and ignominious Manner. § 3. *And since the chief Cause for which the Law so severely punishes all Offences of this Nature, is the direct Tendency of them to a Breach of Publick Peace, by provoking the Parties injured, their Friends and Families to Acts of Revenge, which it would be impossible to restrain by the severest Laws, were there no Redress from Publick Justice for Injuries of this kind, which of all others are most sensibly felt; and since the plain Meaning of such Scandal, as is expressed by Signs or Pictures, is as obvious to common Sense, and as easily understood by every common Capacity, and altogether as provoking as that which is expressed by Writing or Printing, why should it not be equally criminal?* § 4. *And from the same Ground it seemeth also clearly to follow, That such Scandal as is expressed in a scoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expressed in direct Terms; as where a Writing, in a taunting Manner reckoning up several Acts of public Charity done by one, says* You will not play the Jew, nor the Hypocrite, *and so goes on in a Strain of Ridicule to insinuate, that what he did was owing to his Vainglory; or where a Writing, pretending to recommend to one the Characters of several great Men for his Imitation, instead of taking Notice of what they are generally esteemed famous for, pitched on such Qualities only which their Enemies charge them with the Want of, as by proposing such a one to be imitated for his Courage, who is known to be a great Statesman, but no Soldier, and an-*

other to be imitated for his Learning, who is known to be a great General, but no Scholar, &c., which Kind of Writing is as well understood to mean only to upbraid the Parties with the Want of these Qualities, as if it had directly and expressly done so.

Mr. Hamilton. Ay, Mr. Attorney; but what certain Standard Rule have the Books laid down, by which we can certainly know, whether the Words or the Signs are malicious? Whether they are defamatory? Whether they tend to the Breach of the Peace, and are a sufficient Ground to provoke a Man, his Family, or Friends to Acts of Revenge, especially those of the ironical sort of Words? And what Rule have you to know when I write ironically? I think it would be hard, when I say, *such a Man is a very worthy honest Gentleman, and of fine Understanding*, that therefore I meant *he was a Knave or a fool.*

Mr. Attorney. I think the Books are very full; it is said in 1 *Hawk, p.* 193. just now read, *That such Scandal as is expressed in a scoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expressed in direct Terms; as where a Writing, in a taunting Manner says, reckoning up several Acts of Charity done by one, says,* you will not play the Jew or the Hypocrite, *and so goes on to insinuate, that what he did was owing to his Vain-Glory, &c. Which kind of Writing is as well understood to mean only to upbraid the Parties with the Want of these Qualities, as if it had directly and expressly done so.* I think nothing can be plainer or more full than these Words.

Mr. Hamilton. I agree the Words are very plain and I shall not scruple to allow (when we are agreed

that the Words are *false and scandalous, and were spoken in an ironical and scoffing Manner, &c.*) that they are really *libellous;* but here still occurs the Uncertainty, which makes the Difficulty to know, what Words are *scandalous* and what not; for you say, they may be *scandalous, true* or *false;* besides, how shall we know whether the Words were spoke in a *scoffing and ironical Manner*, or seriously? Or how can you know whether the Man did not think as he wrote? For by your Rule, if he did, it is no *Irony*, and consequently no *Libel.* But under Favour, Mr. Attorney, I think the same Book, and the same Section will shew us the only Rule by which all these Things are to be known. The Words are these; *which Kind of Writing is as well* UNDERSTOOD *to mean only to upbraid the Parties with the Want of these Qualities, as if they had directly and expressly done so.* Here it is plain, the Words are *scandalous, scoffing and ironical*, only as they are UNDERSTOOD. I know no Rule laid down in the Books but this, I mean, as the Words are *understood.*

Mr. Ch. Just. Mr. *Hamilton*, do you think it so hard to know, when Words are ironical, or spoke in a scoffing Manner?

Mr. Hamilton. I own it may be known; but I insist, the only Rule to know is, as I do or can *understand* them; I have no other Rule to go by, but as I *understand* them.

Mr. Ch. Just. That is certain. All Words are libellous, or not, as they are *understood.* Those who are to judge of the Words, must judge whether they *are scandalous or ironical, tend to the Breach of the Peace*, or are *seditious:* There can be no Doubt of it.

Mr. Hamilton. I thank your Honour; I am glad to find the Court of this Opinion. Then it follows that those twelve Men must *understand* the Words in the Information to be *scandalous*, that is to say *false;* for I think it is not pretended they are of the *ironical* Sort; and when they understand the Words to be so, they will say we are guilty of Publishing a *false Libel*, and not otherwise.

Mr. Ch. Just. No, Mr. *Hamilton* the Jury may find that *Zenger* printed and published those Papers, and leave it to the Court to judge whether they are libellous; you know this is very common; it is in the Nature of a special Verdict, where the Jury leave the Matter of Law to the Court.

Mr. Hamilton. I know, may it please Your Honour, the Jury may do so; but I do likewise know, they may do otherwise. I know they have the Right beyond all Dispute, to determine both the Law and the Fact, and where they do not doubt of the Law, they ought to do so. This of leaving it to the Judgment of the Court, *whether the Words are libellous or not*, in Effect renders Juries useless (to say no worse) in many Cases; but this I shall have Occasion to speak to by and by; and I will with the Court's Leave proceed to examine the Inconveniences that must inevitably arise from the Doctrines Mr. Attorney has laid down; and I observe, in support of this Prosecution, he has frequently repeated the Words taken from the Case of *Libel, famosus*, in 5 *Co.* This is indeed the leading case, and to which almost all the other Cases upon the Subject of Libels do refer; and I must insist upon saying, That according as this Case

seems to be understood by the [Court] and Mr. Attorney, it is not Law at this Day: For thou' I own it to be base and unworthy to scandalize any Man, yet I think it is even villanous to scandalize a Person of publick Character, and I will go so far into Mr. Attorney's Doctrine as to agree, that if the faults, Mistakes, nay even the Vices of such a Person be private and personal, and don't affect the Peace of the Publick, or the Liberty or Property of our Neighbour, it is unmanly and unmannerly to expose them either by Word or Writing. But when a Ruler of the People brings his personal Failings, but much more his Vices, into his Administration, and the People find themselves affected by them, either in their Liberties or Properties, that will alter the Case mightily, and all the high Things that are said in Favour of Rulers, and of Dignities, and upon the side of Power, will not be able to stop People's Mouths when they feel themselves oppressed, I mean in a free Government. It is true in Times past it was a crime to speak Truth, and in that terrible Court of Star Chamber, many worthy and brave Men suffered for so doing; and yet even in that Court, and in those bad Times, a great and good Man durst say, what I hope will not be taken amiss of me to say in this Place, *to wit, The Practice of informations for Libels is a Sword in the Hands of a wicked King, and an arrant Coward, to cut down and destroy the innocent; the one cannot, because of his high Station, and the other dares not, because of his want of Courage, revenge himself in another Manner.*

Mr. Attorney. Pray Mr. *Hamilton*, have a Care

what you say, don't go too far neither, I don't like those Liberties.

Mr. Hamilton. Sure, Mr. Attorney, you won't make any Applications; all Men agree that we are governed by the best of Kings, and I cannot see the Meaning of Mr. Attorney's Caution; my well known Principles, and the Sense I have of the Blessings we enjoy under His present Majesty, makes it impossible for me to err, and I hope, even to be suspected, in that Point of Duty to my King. May it please Your Honour, I was saying, That notwithstanding all the Duty and Reverence claimed by Mr. Attorney to Men in Authority, they are not exempt from observing the Rules of Common Justice, even in their private or public Capacities; the Laws of our Mother Country know no Exemption. It is true, Men in Power are harder to be come at for Wrongs they do, either to a private Person, or to the Publick; especially a Governor in the Plantations, where they insist upon an Exemption from answering Complaints of any Kind in their own Government. We are indeed told, and it is true they are obliged to answer a Suit in the King's Courts at *Westminster*, for a Wrong done to any Person here: But do we not know how impracticable this is to most Men among us, to leave their Families (who depend upon their Labour and Care for their Livelihood) and carry Evidences to *Britain*, and at a great, nay, a far greater Expense than almost any of us are able to bear, only to prosecute a Governour for an Injury done here. But when the Oppression is general, there is no Remedy even that Way, no, our Con-

stitution has (blessed be God) given us an Opportunity, if not to have such Wrongs redressed, yet by our Prudence and Resolution we may in a great Measure prevent the committing of such Wrongs, by making a Governour sensible that it is to his interest to be just to those under his Care; for such is the Sense that Men in General (I mean Freemen) have of common Justice, that when they come to know, that a chief Magistrate abuses the Power with which he is trusted, for the good of the People, and is attempting to turn that very Power against the Innocent, whether of high or low degree, I say, Mankind in general seldom fail to interpose, and as far as they can, prevent the Destruction of their fellow Subjects. And has it not often been seen (and I hope it will always be seen) that when the Representatives of a free People are by just Representations or Remonstrances, made sensible of the Sufferings of their Fellow-Subjects, by the Abuse of Power in the Hands of a Governour, they have declared (and loudly too) that they were not obliged by any Law to support a Governour who goes about to destroy a Province or Colony, or their Priviledges, which by His Majesty he was appointed, and by the Law he is bound to protect and encourage. But I pray it may be considered of what Use is this mighty Priviledge, if every Man that suffers must be silent? And if a Man must be taken up as a Libeller, for telling his Sufferings to his Neighbour? I know it may be answer'd, *Have you not a Legislature? Have you not a House of Representatives, to whom you may complain?* And to this I answer, we have. But

what then? Is an Assembly to be troubled with every Injury done by a Governour? Or are they to hear of nothing but what those in the Administration will please to tell them? Or what Sort of a Tryal must a Man have? And how is he to be remedied; especially if the Case were, as I have known it to happen in *America* in my Time; That a Governour who has Places (I will not [say] Pensions, for I believe they seldom give that to another which they can take to themselves) to bestow, and can or will keep the same Assembly (after he has modeled them so as to get a Majority of the House in his Interest) for near *twice Seven Years* together? I pray, what Redress is to be expected for an honest Man, who makes his Complaint against a Governour to an Assembly who may properly enough be said, to be made by the same Governour against whom the Complaint is made? The Thing answers it self. No, it is natural, it is a Priviledge, I will go farther, it is a Right which all Freemen claim, and are entitled to complain when they are hurt; they have a Right publickly to remonstrate the Abuses of Power, in the strongest Terms, to put their Neighbours upon their Guard, against the Craft or open Violence of Men in Authority, and to assert with Courage the Sense they have of the Blessings of Liberty, the Value they put upon it, and their Resolution at all Hazards to preserve it, as one of the greatest Blessings Heaven can bestow. And when a House of Assembly composed of honest Freemen sees the general Bent of the Peoples Inclinations, That is it which must and will (I'm sure it ought

to) weigh with a Legislature, in Spite of all the Craft, Caressing and Cajolling, made use of by a Governour, to divert them from hearkening to the Voice of their Country. As we all very well understand the true Reason, why Gentlemen take so much Pains and make such great Interest to be appointed Governours, so is the Design of their Appointment not less manifest. We know his Majesty's gracious Intentions to his Subjects; he desires no more than that his People in the Plantations should be kept up to their Duty and Allegiance to the crown of *Great Britain*, that Peace may be preserved amongst them, and Justice impartially administered; that we may he [sic] governed so as to render us useful to our Mother Country, by encouraging us to make and raise such Commodities as may be useful to *Great Britain*. But will any one say, that all or any of these good Ends are to be effected, by a Governour's setting his People together by the Ears, and by the Assistance of one Part of the People to plague and plunder the other? The Commission which Governours bear, while they execute the Powers given them, according to the Intent of the Royal Grantor, expressed in their Commissions, requires and deserves very great Reverence and Submission; but when a Governour departs from the Duty enjoined him by his Sovereign, and acts as if he was less accountable than the Royal Hand that gave him all that Power and Honour which he is possessed of; this sets People upon examining and enquiring into the Power, Authority and Duty of such a Magistrate, and to compare those with his Conduct, and just as far as

they find he exceeds the Bounds of his Authority, or falls short in doing impartial Justice to the People under his Administration, so far they very often, in return, come short in their Duty to such a Governour. For Power alone will not make a Man beloved, and I have heard it observed, That the Man who was neither good nor wise before his being made a Governour, never mended upon his Preferment, but has been generally observed to be worse; For Men who are not endued with Wisdom and Virtue, can only be kept in Bounds by the Law; and by how much the further they think themselves out of the Reach of the Law, by so much the more wicked and cruel Men are. I wish there were no Instances of the Kind at this Day. And wherever this happens to be the Case of a Governour, unhappy are the People under his Administration, and in the End he will find himself so too; for the People will neither love him nor support him. I make no Doubt but there are those here, who are zealously concerned for the Success of this Prosecution, and yet I hope they are not many, and even some of those, I am perswaded (when they consider what Length such Prosecutions may be carried, and how deeply the Liberties of the People may be affected by such Means) will not all abide by their present Sentiments; I say, *Not All:* For the Man who from an Intimacy and Acquaintance with a Governour has conceived a personal Regard for him, the Man who has felt none of the Strokes of his Power, the Man who believes that a Governour has a Regard for him and confides in him, it is natural for such Men to wish well to the Affairs

of such a Governour; and as they may be Men of Honour and Generosity, may, and no Doubt will, wish him Success, so far as the Rights and the Priviledges of their Fellow Citizens are not affected. But as Men of Honour, I can apprehend nothing from them; they will never exceed that Point. There are others who are under stronger Obligations, and those are such, as are in some Sort engaged in Support of a Governour's Cause, by their own or their Relations Dependance on his Favour, for some Post or Preferment; such Men have what is commonly called Duty and Gratitude, to influence their Inclinations, and oblige them to go to his Lengths. I know Men's Interests are very near to them, and they will do much, rather than foregoe the Favour of a Governour, and a Livelihood at the same Time; but I can with very just Grounds hope, even from those Men, whom I will suppose to be Men of Honour and Conscience too, that when they see, the Liberty of their Country is in Danger, either by their Concurrence, or even by their Silence, they will like *Englishmen*, and like themselves, freely make a Sacrifice of any Preferment or Favour rather than be accessory to destroying the Liberties of their Country, and entailing Slavery upon their Posterity. There are indeed another set of Men, of whom I have no Hopes, I mean such, who lay aside all other Considerations, and are ready to joyn with Power in any Shapes, and with any Man or Sort of Men, by whose Means or Interest they may be assisted to gratify their Malice and Envy against those whom they have been pleased to hate; and that have no

other Reason, but because they are Men of Abilities and Integrity, or at least are possessed of some valuable Qualities far superior to their own. But as Envy is the Sin of the Devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this detestable and worthless Sort of Men, nor will their Opinions or Inclinations have any Influence upon this Tryal. But to proceed; I beg Leave to insist, That the Right of complaining or remonstrating is natural; And the Restraint upon this natural Right is the Law only, and that those Restraints can only extend to what is *false;* For as it is Truth alone which can excuse or justify any Man for complaining of a bad Administration, I as frankly agree, that nothing ought to excuse a Man who raises a false Charge or Accusation, even against a private Person, and that no manner of Allowance ought to be made to him who does so against a publick Magistrate. *Truth* ought to govern the whole Affair of Libels, and yet the Party accused runs Risque enough even then; for if he fails of proving every Tittle of what he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Cost, that when the Prosecution is set on Foot by Men in Power, it seldom wants Friends to Favour it. And from thence (it is said) has arisen the great Diversity of Opinions among Judges, about what words were or were not scandalous or libellous. I believe it will be granted, that there is not greater Uncertainty in any Part of the Law, than about Words of Scandal; it would be mispending of the Court's Time to mention the Cases; they may be

said to be numberless; and therefore the uttermost Care ought to be taken in following Precedents; and the Times when the Judgments were given, which are quoted for Authorities in the Case of Libels, are much to be regarded. I think it will be agreed, That ever since the Time of the Star Chamber, where the most arbitrary and destructive Judgments and Opinions were given, that ever an *Englishman* heard of, at least in his own Country: I say, Prosecutions for Libels since the Time of that arbitrary Court, and until the glorious Revolution, have generally been set on Foot at the Instance of the Crown or its Ministers; and it is no small Reproach to the Law, that these Prosecutions were too often and too much countenanced by the Judges, who held their Places at Pleasure, (a disagreeable Tenure to any Officer, but a dangerous one in the Case of a Judge.) To say more to this Point may not be proper. And yet I cannot think it unwarrantable, to shew the unhappy Influence that a Sovereign has sometimes had, not only upon Judges, but even upon Parliaments themselves.

It has already been shewn, how the Judges differed in their Opinions about the Nature of a Libel, in the Case of the seven Bishops. There you see three Judges of one Opinion, that is, of a wrong Opinion, in the Judgment of the best Men in *England*, and one Judge of a right Opinion. How unhappy might it have been for all of us at this Day, if that Jury had understood the Words in that Information as the Court did? Or if they had left it to the Court, to judge whether the Petition of the

Bishops was or was not a Libel? No they took upon them, to their immortal Honour! to determine both *Law* and *Fact*, and to *understand* the Petition of the Bishops *to be no Libel, that is, to contain no falshood nor Sedition*, and therefore found them *Not Guilty*. And remarkable is the Case of Sir *Samuel Barnardiston*, who was fined 10,000*L*. for Writing a Letter, in which, it may be said, none saw any Scandal or Falshood but the Court and Jury; for that Judgment was afterwards looked upon as a cruel and detestable Judgment, and therefore was reversed by Parliament. Many more Instances might be given of the Complaisance of Court-Judges, about those Times and before; but I will mention only one Case more, and that is the Case of Sir *Edward Hales*, who tho' a *Roman Catholick*, was by King *James* II. preferred to be a Colonel of his Army, notwithstanding the Statute of 25 *Cha. 2d. Chap.* 2. by which it is provided, *That every one that accepts of an Office, Civil or Military, &c. shall take the Oaths, subscribe the Declaration, and take the Sacrament, within three Months, &c. otherwise he is disabled to hold such Office, and the Grant for the same to be null and void, and the Party to forfeit 500l.* Sir *Edward Hales* did not take the Oaths and Sacrament, and was prosecuted for the 500*l.* for exercising the Office of a Colonel by the Space of three Months, without conforming as in the Act is directed. Sir *Edward* pleads, *That the King by His Letters Patents did dispence with his taking the Oaths and Sacrament, and subscribing the Declaration, and had pardoned the forfeiture of* 500*l. And whether the King's Dispensation was good, against the said Act of Parliament?* was

the Question. I shall mention no more of this Case, than to shew how in the Reign of an arbitrary Prince, where Judges held their Seats at Pleasure, their Determinations have not always been such as to make Precedents of, but the Contrary; and so it happened in this Case where it was solemnly judged, *That, notwithstanding this Act of Parliament, made in the strongest Terms, for Preservation of the Protestant Religion, That yet the King had, by his Royal Prerogative, a Power to dispence with that Law;* and Sir *Edward Hales* was acquitted by the Judges accordingly. So the King's Dispensing Power, being by the Judges set up above the Act of Parliament, this Law, which the People looked upon as their chief Security against Popery and Arbitrary Power, was by this Judgment rendered altogether ineffectual. But this Judgment is sufficiently exposed by Sir *Edward Atkins*, late one of the Judges of the Court of Common Pleas in his *Enquiry into the King's Power of dispensing with poenal Statutes;* where it is shewn, *Who it was that first invented Dispensations; how they came into* England; *what ill Use has been made of them there; and all this principally owing to the Countenance given them by the Judges.* He says of the Dispensing Power,* *The Pope was the Inventor of it; our Kings have borrowed it from them; and the Judges have from Time to Time nursed and dressed it up, and given it countenance; and it is still upon the Growth, and encroaching, 'till it has almost subverted all Law, and made Regal Power absolute if not*

Sir *Edward Atkins'* Enquiry into the Power of Dispensing with poenal Statutes.

* Postscript to the *Enquiry, pag.* 51.

dissolute. This seems not only to shew how far Judges have been influenced by Power, and how little Cases of this Sort, where the Prerogative has been in Question in former Reigns, are to be relied upon for Law: But I think it plainly shews too, that a Man may use a greater Freedom with the Power of His Sovereign and the Judges in *Great Britain*, than it seems he may with the Power of a Governour in the Plantations, who is but a Fellow-Subject. Are these Words with which we are charged, like these? Do Mr. *Zenger's* Papers contain any such Freedom with his Governour or His Council, as Sir *Edward Atkins* has taken, with the Regal Power and the Judges in *England?* And yet I never heard of any Information brought against him for these Freedoms.

If then upon the whole there is so great an Uncertainty among Judges (learned and great Men) in Matters of this Kind; If Power has had so great an Influence on Judges; how cautious ought we to be in determining by their Judgments, especially in the Plantations, and in the Case of Libels? There is Heresy in Law, as well as in Religion, and both have changed very much; and we well know that it is not two Centuries ago that a Man would have been burnt as an Heretick, for owning such Opinions in Matters of Religion as are publickly wrote and printed at this Day. They were fallible Men, it seems, and we take the Liberty not only to differ from them in religious Opinion, but to condemn them and their Opinions too; and I must presume, that in taking these Freedoms in thinking and speaking about Matters of Faith and Religion, we are in

the right: For, tho' it is said there are very great Liberties of this Kind taken in *Newe York*, yet I have heard of no Information prefered by Mr. Attorney for any Offences of this Sort. From which I think it is pretty clear, That in *New-York* a Man may make very free with his God, but he must take special Care what he says of his Governour. It is agreed upon by all Men that this is a Reign of Liberty, and while Men keep within the Bounds of Truth, I hope they may with Safety both speak and write their Sentiments of the Conduct of Men in Power, I me[a]n of that Part of their Conduct only, which affects the Liberty or Property of the People under their Administration; were this to be denied, then the next Step may make them Slaves. For what Notions can be entertained of Slavery, beyond that of suffering the greatest Injuries and Oppressions, without the Liberty of complaining; or if they do, to be destroyed, Body and Estate, for so doing?

It is said and insisted upon by Mr. Attorney, *That Government is a sacred Thing; That it is to be supported and reverenced; It is Government that protects our Persons and Estates; That prevents Treasons, Murders, Robberies, Riots, and all the Train of Evils that overturns Kingdoms and States, and ruins particular Persons; and if those in the Administration, especially the Supream Magistrate, must have all their Conduct censured by private Men, Government cannot subsist.* This is called *a Licentiousness not to be tollerated.* It is said, *That it brings the Rulers of the People into Contempt, and their Authority not to be regarded, and so in*

the End the Laws cannot be put in Execution. These I say, and such as these, are the general Topicks insisted upon by Men in Power, and their Advocates. But I wish it might be considered at the same Time, How often it has happened, that the Abuse of Power has been the primary Cause of these Evils, and that it was the Injustice and Oppression of these great Men, which has commonly brought them into Contempt with the People. The Craft and Art of such Men is great, and who, that is the least acquainted with History or Law, can be ignorant of the specious Pretences, which have often been made use of by Men in Power, to introduce arbitrary Rule, and destroy the Liberties of a free People. I will give two Instances; and as they are Authorities not to be denied, nor can be misunderstood, I presume they will be sufficient.

The *first* is the Statute of 3*d.* of *Hen.* 7. *Cap.* I.

The Preamble of the Statute will prove all and more than I have alledged. It begins, '*The King* '*Our Sovereign Lord remembereth how by unlawful* '*Maintenances, giving of Liveries, Signs and Tokens,* '*&c. untrue Demeanings of Sheriffs in making of Pan-* '*nels, and other untrue Returns, by taking of Money, by* '*Injuries, by great Riots and unlawful Assemblies; the* '*Policy and good Rule of this Realm is almost subdued;* '*and for the not punishing these Inconveniences, and by* '*Occasion of the Premises, little or nothing may be found* '*by Inquiry, &c. to the Increase of Murders, &c. and* '*unsureties of all Men living, and Losses of their Lands* '*and Goods.*' Here is a fine and specious Pretence for introducing the Remedy, as it is called, which

is provided by this Act; *that is;* instead of being lawfully accused by 24 good and lawful Men of the Neighbourhood, and afterwards tried by 12 like lawful Men, here is a Power given to the Lord Chancellor, Lord Treasurer, the Keeper of the King's privy Seal, or two of them, calling to them a Bishop, a temporal Lord, and other great Men mentioned in the Act, (who, it is to be observed, were all to be Dependants on the Court) to receive Information against any Person for any of the Misbehaviours recited in that Act, and by their Discretion to examine, and to punish them according to their demerit.

The second Statute I proposed to mention, is the 11*th* of the same King, *Chap.* 3*d.* the Preamble of which Act has the like fair Pretences as the former; *for the King calling to his Remembrance the good Laws made against the receiving of Liveries, &c. unlawful Extortions, Maintenances, Embracery, &c. unlawful Games, &c. and many other great Enormitys, and Offences committed against many good Statutes, to the Displeasure of Almighty God, which,* the Act says, *could not, nor yet can, be conveniently punished by the due Order of the Law, except it were first found by 12 Men, &c. which, for the Causes aforesaid, will not find nor yet present the Truth.* And therefore the same Statute directs, *that the Justices of Assize, and Justices of the Peace, shall, upon Information for the King before them made, have full Power, by their Discretion, to hear and determine all such Offences.* Here are two Statutes that are allowed to have given the deepest Wound to the Liberties of the People of *England* of any that

I remember to have been made, unless it may be said, that the Statute made in the Time of *Henry 8th*, by which his Proclamations were to have the Effect of Laws, might in its Consequence be worse. And yet we see the plausible Pretences found out by the great Men to procure these Acts. And it may justly be said, That by those Pretences the People of *England* were cheated or aw'd into Delivering up their antient and sacred Right of Tryals by Grand and Petit Juries. I hope to be excused for this Expression, seeing my Lord *Coke* calls it *an unjust and strange Act, that tended in its Execution to the great Displeasure of Almighty God, and the utter Subversion of the common Law.*

These, I think, make out what I alledged, and are flagrant Instances of the Influence of Men in Power, even upon the Representatives of a whole Kingdom. From all which I hope it will be agreed, that it is a Duty which all good Men owe to their Country, to guard against the unhappy Influence of ill Men when intrusted with Power, and especially against their Creatures and Dependants, who, as they are generally more necessitous, are surely more covetous and cruel. But it is worthy of Observation, that tho' the Spirit of Liberty was born down and oppressed in *England* at that Time, yet it was not lost; for the Parliament laid hold of the first Opportunity to free the Subject from the many insufferable Oppressions and Outrages committed upon their Persons and Estates by Colour of these Acts, the last of which being deemed the most grievous,

4. *Inst.*

was repealed in the first Year of *Hen. 8th.* Tho' it is to be observed, that *Hen. 7th*, and his Creatures reap'd such great Advantages by the grievous Oppressions and Exactions, *grinding the Faces of the poor Subjects*, as my Lord *Coke* says, by Colour of this Statute by information only, that a Repeal of this Act could never be obtained during the Life of that Prince. The other Statute being the favourite Law for Supporting arbitrary Power, was continued much longer. The Execution of it was by the great Men of the Realm; and how they executed it, the Sense of the Kingdom, expressed in the *17th* of *Charles 1st.* (by which the Court of Star Chamber, the Soil where Informations grew rankest) will best declare. In that Statute *Magna Charta*, and the other Statutes made in the Time of *Edw. 3d.* which, I think, are no less than five, are particularly enumerated as Acts, by which the Liberties and Priviledges of the People of *England* were secured to them, against such oppressive Courts as the Star-Chamber and others of the like Jurisdiction. And the Reason assigned for their pulling down the Star-Chamber, is, *That the Proceedings, Censures and Decrees of the Court of Star Chamber, even tho' the great Men of the Realm, nay and a Bishop too* (holy Man) *were Judges, had by Experience been found to be an intolerable Burthen to the Subject, and the Means to introduce an arbitrary Power and Government.* And therefore that Court was taken away, with all the other Courts in that Statute mentioned, having like Jurisdiction.

I don't mention this Statute, as if by the taking

away the Court of Star Chamber, the Remedy for many of the Abuses or Offences censured there, was likewise taken away; no, I only intend by it to shew that the People of *England* saw clearly the Danger of trusting their Liberties and Properties to be tried, even by the greatest Men in the Kingdom, without the Judgment of a Jury of their Equals. They had felt the terrible effects, of leaving it to the Judgment of these great Men to say what was *scandalous and seditious, false or ironical.* And if the Parliament of *England* thought this Power of judging was too great to be trusted to Men of the first Rank in the Kingdom, without the Aid of a Jury, how sacred soever their Characters might be, and therefore restored to the People their original Right of tryal by Juries, I hope to be excused for insisting, that by the Judgment of a Parliament, from whence no Appeal lies, the Jury are the proper Judges, of what is *false* at least, if not of what is *scandalous and seditious.* This is an Authority not to be denied, it is as plain as it is great, and to say, that this Act indeed did restore to the People Tryals by Juries, which was not the Practice of the Star Chamber, but that did not give the Jurors any new Authority, or any Right to try Matters of Law, I say this Objection will not avail; for I must insist, that where Matter of Law is complicated with Matter of Fact, the Jury have a Right to determine both. As for Instance; upon Indictment for Murder, the Jury may, and almost constantly do, take upon them to judge whether the Evidence will amount to Murder or Manslaughter, and find accordingly; and I

must say I cannot see, why in our Case the Jury have not at least as good a Right to say, whether our News Papers are a Libel or no Libel, as another Jury has to say, whether killing of a Man is Murder or Manslaughter. The Right of the Jury, to find such a Verdict as they in their Conscience do think is agreeable to their Evidence, is supported by the Authority of *Bushel's* Case, in *Vaghan's Reports, pag.* 135. beyond any Doubt. For, in the Argument of that Case, the Chief Justice who delivered the Opinion of the Court, lays it down for Law, *That in all General Issues, as upon* Non Cul. *in* Trespass, Non Tort. Nul Disseizin *in Assize*, &c. *tho' it is Matter of Law, whether the Defendant is a Trespasser, a Disseizer. &c. in the particular Cases in Issue, yet the Jury find not* (*as in a special Verdict*) *the Fact of every Case, leaving the Law to the Court; but find for the Plaintiff or Defendant upon the Issue to be tried, wherein they resolve both Law and Fact complicately.* It appears by the same Case, that tho' the discreet and lawful Assistance of the Judge, by Way of Advice, to the Jury, may be useful; yet that Advice or Direction ought always to be *upon Supposition, and not positive, and upon Coersion.* The Reason given in the same Book is, *Because the Judge* (*as Judge*) *cannot know what the Evidence is which the Jury have*, that is, *he can only know the Evidence given in Court; but the Evidence which the Jury have, may be of their own Knowledge, as they are returned of the Neighbourhood. They may also know from their own Knowledge, that what is sworn in Court is not true; and*

Vaughan's Rep. p. 150. *Pag.* 144. *pag.* 147.

they may know the Witnesses to be stigmatized, to which the Court may be strangers. But what is to my Purpose, is, that suppose that the Court did really know all the Evidence which the Jury know, yet in that Case it is agreed, *That the Judge and Jury may differ in the Result of their Evidence as well as two Judges may*, which often happens. And in *pag.* 148 the Judge subjoins the Reason, why it is no Crime for a Jury to differ in Opinion from the Court, where he says, *That a Man cannot see with another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the Thing by another's Understanding or Reasoning.* From all which (I insist) it is very plain, *That the Jury are by Law at Liberty (without any affront to the Judgment of the Court) to find both the Law and the Fact, in our Case,* as they did in the Case I am speaking to, which I will beg Leave just to mention, and it was this. Mr. *Penn* and *Mead* being Quakers, and having met in a peaceable Manner, after being shut out of their Meeting House, preached in *Grace Church Street* in *London*, to the People of their own Perswasion, and for this they were indicted; and it was said, *That they with other Persons, to the Number of 300. unlawfully and tumultuously assembled, to the Disturbance of the Peace, &c.* To which they pleaded *Not Guilty.* And the Petit Jury being sworn to try the Issue between the King and the Prisoners, that is, whether they were Guilty, according to the Form of the Indictment? Here there was no Dispute but they were assembled together, to the Number mentioned in the Indictment; But *Whether that Meeting together was riotously, tumultuously, and to the Disturb-*

ance of the Peace? was the Question. And the Court told the Jury it was, and ordered the Jury to find it so; *For* (said the Court) *the Meeting was the Matter of Fact, and that is confessed, and we tell you it is unlawful, for it is against the Statute; and the Meeting being unlawful, it follows of Course that it was tumultuous, and to the Disturbance of the Peace.* But the Jury did not think fit to take the Courts Word for it, for they could neither find *Riot, Tumult*, or any Thing tending to the *Breach of the Peace* committed at that Meeting; and they acquitted Mr. *Penn* and *Mead.* In doing of which they took upon them to judge both the *Law* and the *Fact*, at which the Court (being themselves true Courtiers) were so much offended, that they fined the Jury 40 Marks a piece, and committed them till paid. But Mr. *Bushel*, who valued the Right of a Juryman and the Liberty of his Country more than his own, refused to pay the Fine, and was resolved, (tho' at a great Expence and trouble too) to bring, and did bring, his *Habeas Corpus*, to be relieved from his Fine and Imprisonment, and he was released accordingly; and this being the Judgment in his Case, it is established for Law, *That the Judges, how great soever they be, have no Right to Fine, imprison, or punish a Jury, for not finding a Verdict according to the Direction of the Court.* And this I hope is sufficient to prove, That Jurymen are to see with their own Eyes, to hear with their own ears, and to make use of their own Consciences and Understandings, in judging of the Lives, Liberties or Estates of their fellow Subjects. And so I have done with this Point.

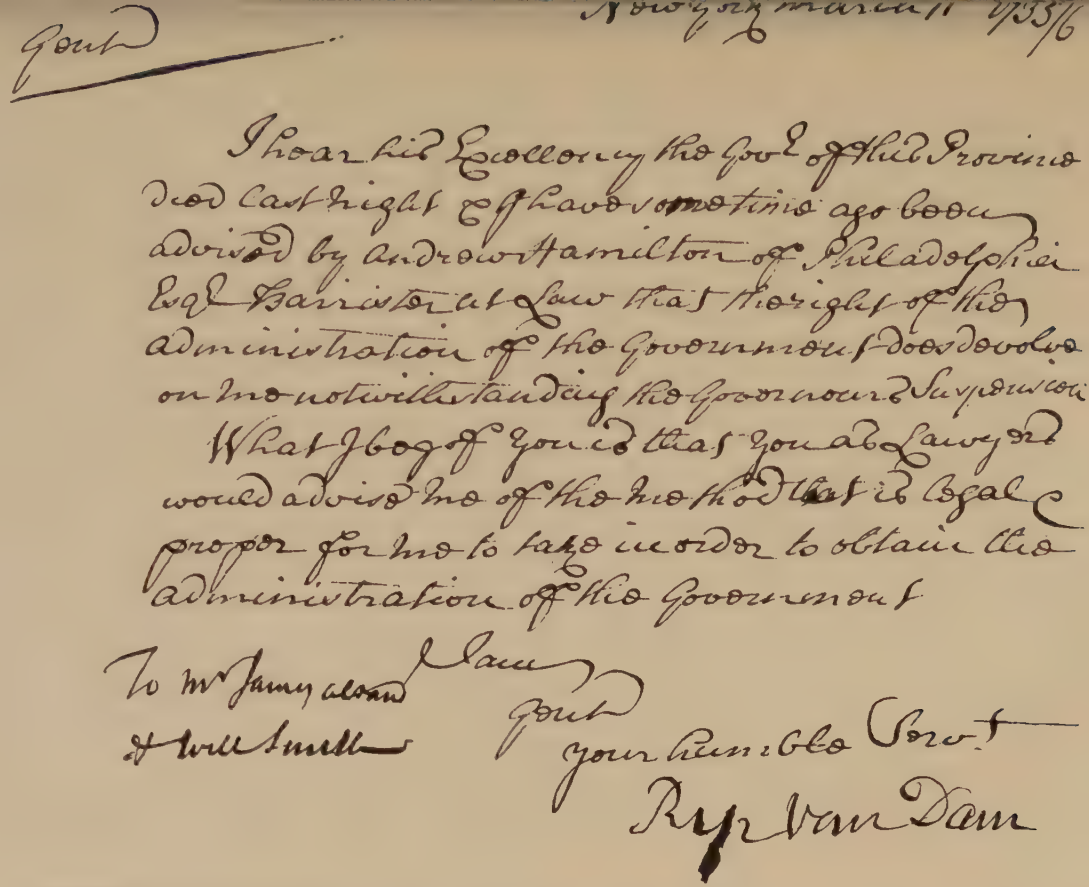
This is the second Informotion for Libelling of a Governour that I have known in *America*. And the first, tho' it may look like a Romance, yet as it is true, I will beg Leave to mention it. Governor *Nicholson*, who happened to be offended with one [of] his Clergy, met him one Day upon the Road, and as was usual with him (under the Protection of his Commission) used the poor Parson with the worst of Language, threatened to cut off his Ears, slit his Nose, and at last to shoot him through the Head. The Parson being a reverend Man, continued all this Time uncovered in the Heat of the Sun, until he found an Opportunity to fly for it; and coming to a Neighbours House felt himself very ill of a Fever, and immediately writes for a doctor; and that his Physician might the better judge of his Distemper, he acquainted him with the Usage he had received; concluding, that the Governor was certainly mad, for that no Man in his Senses would have behaved in that manner. The Doctor unhappily shews the Parson's Letter; the Governour came to hear of it; and so an Information was preferred against the poor Man for saying *he believed the Governour was mad;* and it was laid in the Information to be *false, scandalous,* and *wicked, and wrote with Intent to move Sedition among the People, and bring His Excellency into Contempt.* But by an Order from the late Queen *Anne*, there was a Stop put to that Prosecution, with sundry others set on foot by the same Governour, against Gentlemen of the greatest Worth and Honour in that Government.

And may not I be allowed, after all this, to say,

That by a little Countenance, almost any Thing which a Man writes, may, with the Help of that useful Term of Art, called an *Innuendo*, be construed to be a Libel, according to Mr. Attorney's Definition of it, That *whether the Words are spoken of a Person of a publick Character, or of a private Man, whether dead or Living, good or bad, true or false* all make a Libel; for according to Mr. Attorney, *after a Man hears a Writing read, or reads and repeats it, or laughs at it, they are all punishable.* It is true, Mr. Attorney is so good as to allow, *after the Party knows it to be a Libel*, but he is not so kind as to take the Man's Word for it.

Here were several Cases put to shew, That tho' what a Man writes of a Governour was true, proper and necessary, yet according to the foregoing Doctrine it might be construed to be a libel: But Mr. *Hamilton* after the Tryal was over, being informed, That some of the Cases he had put had really happened in the Government, he declared he had never heard of any such; and as he meant no personal Reflections, he was sorry he had mentioned them, and therefore they are omitted here.

Mr. Hamilton. If a Libel is understood in the large and unlimited Sense urged by Mr. Attorney, there is scarce a Writing I know that may not be called a Libel, or scarce any Person safe from being called to an Account as a Libeller: For *Moses*, meek as he was, Libelled *Cain;* and who is it that has not



FACSIMILE OF LETTER FROM RIP VAN DAM TO JAMES ALEXANDER AND WILLIAM SMITH, SEEKING THEIR ADVICE WITH REGARD TO THE GOVERNORSHIP.

libelled the Devil? For according to Mr. Attorney, it is no Justification to say one has a bad Name. *Echard* has libelled our good King *William; Burnet* has libelled among many others King *Charles* and King *James*; and *Rapin* has libelled them all. How must a Man speak or write, or what must he hear, read, or sing? Or when must he laugh, so as to be secure from being taken up as a Libeller? I sincerely believe, that were some Persons to go thro' the Streets of *New-York* now-a-days, and read a Part of the Bible, if it was not known to be such, Mr. Attorney, with the Help of his *Innuendo's*, would easily turn it into a Libel. As, for instance, *Is* IX. 16. *The Leaders of the People cause them to err, and they that are led by them are destroyed.* But should Mr. Attorney go about to make this a Libel, he would treat it thus; *The Leaders of the People* [*innuendo*, the Governour and Council of *New-York*] *cause them* [*innuendo*, the People of this Province] *to err, and they* [the people of this Province meaning] *that are led by them* [the Governour and Council meaning] *are destroyed* [*innuendo*, are deceived into the Loss of their Liberty] which is the worst Kind of Destruction. Or if some Persons should publickly repeat, in a Manner not pleasing to his Betters, the 10*th* and 11*th* Verses of the LVIth. *Chap.* of the same Book, there Mr. Attorney would have a large Field to display his Skill, in the artful Application of his *Innuendo's*. The Words are, *His Watchmen are all blind, they are ignorant, &c. Yea, they are greedy Dogs, that can never have enough.* But to make them a Libel, there is according to Mr. Attorney's Doctrine, no more wanting but the Aid

of his Skill, in the right adapting his *Innuendo's*. As for Instance; *His Watchmen* [*innuendo*, the Governour's Council and Assembly] *are blind, they are ignorant* [*innuendo*, will not see the dangerous Designs of His Excellency] *Yea, they* [the Governour and Council meaning] *are greedy Dogs, which can never have enough* [*innuendo*, enough of Riches and Power.] Such an Instance as this is seems only fit to be laugh'd at; but I may appeal to Mr. Attorney himself, whether these are not at least equally proper to be applied to His Excellency and His Ministers, as some of the Inferences and *Innuendo's* in his Information against my Client. Then if Mr. Attorney is at Liberty to come into Court, and file an Information in the King's Name, without Leave, who is secure, whom he is pleased to prosecute as a Libeller? And as the Crown Law is contended for in bad Times, there is no Remedy for the greatest Oppression of this Sort, even tho the Party prosecuted is aquitted with Honour. And give me Leave to say, as great Men as any in *Britain*, have boldly asserted, That the Mode of Prosecuting by Information (when a Grand Jury will not find *Billa vera*) is a national Grievance, and greatly inconsistent with that Freedom, which the Subjects of *England* enjoy in most other Cases. But if we are so unhappy as not to be able to ward off this Stroke of Power directly, yet let us take Care not to be cheated out of our Liberties, by Forms and Appearances; let us always be sure that the Charge in the Information is made out clearly even beyond a Doubt; for tho Matters in the Information may be called *Form* upon Tryal, yet they may be, and often have been

found to be *Matters of Substance* upon giving judgment.

Gentlemen: The Danger is great, in Proportion to the Mischief that may happen, through our too great Credulity. A proper Confidence in a Court is commendable; but as the Verdict (whatever it is) will be yours, you ought to refer no Part of your Duty to the Discretion of other Persons. If you should be of Opinion, that there is no Falsehood in Mr. *Zenger's* Papers, you will, nay (pardon me for the Expression) you ought to say so; because you don't know whether others (I mean the Court) may be of that Opinion. It is your Right to do so, and there is much depending upon your Resolution, as well as upon your Integrity.

The loss of liberty to a generous Mind, is worse than Death; and yet we know there have been those in all Ages, who for the sake of Preferment, or some imaginary Honour, have freely lent a helping Hand, to oppress, nay to destroy their Country. This brings to my Mind that saying of the immortal *Brutus*, when he looked upon the Creatures of *Cæsar*, who were very great Men, but by no Means good Men. "*You* Romans *said* Brutus, *if yet I may call you so, consider* "*what you are doing; remember that you are assisting* "Cæsar *to forge those very Chains, which one Day he* "*will make your selves wear.*" This is what every Man (that values Freedom) ought to consider: He should act by Judgment and not by Affection or Self-Interest; for, where those prevail, No Ties of either Country or Kindred are regarded, as upon the other Hand, the Man, who loves his Country, prefers it's

Liberty to all other Considerations, well knowing that without Liberty, life is a Misery.

A famous Instance of this is found in the History of another brave *Roman* of the same Name, I mean *Lucius Junius Brutus*, whose story is well known and therefore I shall mention no more of it, than only to shew the Value he put upon the Freedom of his Country. After this great Man, with his Fellow Citizens whom he had engag'd in the Cause, had banish'd *Tarquin* the Proud, the last King of *Rome*, from a Throne which he ascended by inhuman Murders and possess'd by the most dreadful Tyranny and Proscriptions, and had by this Means, amass'd incredible Riches, even sufficient to bribe to his Interest, many of the young Nobility of *Rome*, to assist him in recovering the Crown; but the Plot being discover'd, the principal Conspirators were apprehended, among whom were two of the Sons of *Junius Brutus*. It was absolutely necessary that some should be made Examples of, to deter others from attempting the restoring of *Tarquin* and destroying the Liberty of *Rome*. And to effect this it was, that *Lucius Junius Brutus*, one of the Consuls of *Rome*, in the Presence of the *Roman* People, sat Judge and condemned his own Sons, as Traitors to their Country: And to give the last Proof of his exalted Virtue, and his Love of Liberty: He with a Firmness of Mind (only becoming so great a Man) caus'd their Heads to be struck off in his own Presence; and when he observ'd that his rigid Virtue, occasion'd a sort of Horror among the People, it is observ'd he only said, "*My Fellow-*"*Citizens, do not think that this Proceeds from any Want*

"*of natural Affection: No, The Death of the Sons of* "Brutus *can affect* Brutus *only; but the loss of Liberty* "*will affect my Country.*" Thus highly was Liberty esteem'd in those Days that a Father could sacrifice his Sons to save his Country. But why do I go to Heathen *Rome*, to bring Instances of the Love of Liberty, the best Blood of *Britain* has been shed in the Cause of Liberty; and the Freedom we enjoy at this Day, may be said to be (in great measure) owing to the glorious Stand the famous *Hamden*, and others of our Countrymen, made against the arbitrary Demands, and illegal Impositions, of the Times in which they lived; Who rather than give up the Rights of *Englishmen*, and submit to pay an illegal Tax of no more, I think, than 3 Shillings, resolv'd to undergo, and for their Liberty of their Country did undergo the greatest Extremities, in that arbitrary and terrible Court of Star Chamber, to whose arbitrary Proceedings, (it being compos'd of the Principal Men of the Realm, and calculated to support arbitrary Government) no Bounds or Limits could be set, nor could any other Hand remove the Evil but a Parliament.

Power may justly be compared to a great River, while kept within its due Bounds, is both Beautiful and Useful; but when it overflows it's Banks, it is then too impetuous to be stemm'd, it bears down all before it, and brings Destruction and Desolation wherever it comes. If then this is the Nature of Power, let us at least do our Duty, and like wise Men (who value Freedom) use our utmost care to support Liberty, the only Bulwark against lawless

Power, which in all Ages has sacrificed to its wild Lust and boundless Ambition, the Blood of the best Men that ever liv'd.

I hope to be pardon'd Sir for my Zeal upon this Occasion; it is an old and wise Caution, *That when our Neighbours House is on Fire, we ought to take Care of our own.* For tho' Blessed be God, I live in a Government where Liberty is well understood, and freely enjoy'd; yet Experience has shewn us all (I'm sure it has to me) that a bad Precedent in one Government, is soon set up for an Authority in another; and therefore I cannot but think it mine, and every Honest Man's Duty, that (while we pay all due Obedience to Men in Authority) we ought at the same Time to be upon our Guard against Power, wherever we apprehend that it may affect ourselves or our Fellow-Subjects.

I am truely very unequal to such an Undertaking on many Accounts. And you see I labour under the Weight of many Years, and am born down with great Infirmities of Body; yet Old and Weak as I am, I should think it my Duty, if required, to go to the utmost Part of the Land, where my Service could be of any Use in assisting to quench the Flame of Prosecutions upon Informations, set on Foot by the Government, to deprive a People of the Right of Remonstrating (and complaining too) of the arbitrary Attempts of Men in Power. Men who injure and oppress the People under their Administration provoke them to cry out and complain; and then make that very Complaint the Foundation for new Oppressions and Prosecutions. I wish I could say

there were no Instances of this Kind. But to conclude; the Question before the Court and you, Gentlemen of the Jury, is not of small nor private Concern, it is not the Cause of a poor Printer, nor of *New-York* alone, which you are now trying: No! It may in its Consequence, affect every Freeman that lives under a British Government on the main of *America*. It is the best Cause. It is the Cause of Liberty; and I make no Doubt but your upright Conduct, this Day, will not only entitle you to the Love and Esteem of your Fellow-Citizens; but every Man who prefers Freedom to a Life of Slavery will bless and honour You, as Men who have baffled the Attempt of Tyranny; and by an impartial and uncorrupt Verdict, have laid a noble Foundation for securing to ourselves, our Posterity, and our Neighbours, That, to which Nature and the Laws of our Country have given us a Right,––The Liberty–––––both of exposing and opposing arbitrary Power (in these Parts of the World, at least) by speaking and writing Truth.

Here Mr. Attorney observ'd, that Mr. Hamilton *had gone very much out of the Way, and had made himself and the People very merry: But that he had been citing Cases, not at all to the Purpose; he said, there was no such Cause as Mr.* Bushel's *or Sir* Edward Hales *before the Court; and he could not find out what the Court or Jury had to do with Dispensations, Riots or unlawful Assemblies: All that the Jury had to consider of was Mrs. (sic)* Zenger's *Printing and Publishing two scandalous Libels, which very highly reflected on*

his Excellency and the principal Men concern'd in the Administration of this Government, which is confess'd. That is, the Printing and Publishing of the Journals set forth in the Information is confess'd. And concluded that as Mr. Hamilton *had confess'd the Printing and there could be no doubt but they were scandalous Papers, highly reflecting upon his Excellency, and the principal Magistrates in the Province. And therefore he made no Doubt but the Jury would find the Defendant Guilty, and would refer to the Court for their Direction.*

Mr. Ch. Just. Gentlemen of the Jury. The great pains Mr. *Hamilton* has taken, to shew how little Regard Juries are to Pay to the Opinion of the Judges; and his insisting so much upon the Conduct of some Judges in Tryals of this kind; is done, no doubt, with a Design that you should take but very little Notice, of what I might say upon this Occasion. I shall therefore only observe to you that, as the Facts or Words in the Information are confessed: The only Thing that can come in Question before you is, whether the Words as set forth in the Information, make a Lybel. And that is a Matter of Law, no Doubt, and which you may leave to the Court. But I shall trouble you no further with any Thing more of my own, but read to you the Words of a learned and upright Judge* in a Case of the like Nature.

'To say that corrupt Officers are appointed to ad-' minister Affairs, is certainly a Reflection on the Gov-' ernment. If People should not be called to account for

*Ch. J. *Holt* in *Tutchin's* Case.

possessing the People with an ill Opinion of the Gov-
'ernment, no Government can subsist. For it is very
'necessary for all Governments that the People should
'have a good Opinion of it. And nothing can be worse
'to any Government, than to endeavour to procure Ani-
'mosities; as to the Management of it, this has always
'been look'd upon as a Crime, and no Government can
'be safe without it be punished.

'Now you are to consider, whether these Words I
'have read to you, do not tend to beget an ill Opinion of
'the Administration of the Government? To tell us,
'that those that are employed know nothing of the Mat-
'ter, and those that do know are not employed. Men are
'not adapted to Offices, but Offices, to Men out of a par-
'ticular Regard to their Interest, and not to their Fitness
'for the Places; this is the Purport of these Papers.

Mr. Hamilton I humbly beg Your Honours Pardon; I am very much mis-apprehended, if you suppose what I said was so designed.

Sir, you know; I made an Apology for the Freedom I found myself under a Necessity of using on this Occasion. I said, there was Nothing personal designed; it arose from the Nature of our Defence.

The Jury withdrew and in a small Time returned and being asked by the Clerk whether they were agreed of their Verdict, and whether *John Peter Zenger* was guilty of Printing and Publishing the Libels in the Information mentioned? They answered by *Thomas Hunt*, their Foreman, *Not Guilty*, Upon which there were three Huzzas in the Hall which was crowded with People, and the next Day I was discharged from my Imprisonment."

The cheers of the crowd annoyed the court and the Chief Justice attempted a rebuke, but Captain Norris, son-in-law of Lewis Morris, replied boldly, saying, "Cheers were customary on such occasions, and especially on the occasion of the trial of the Bishop of London."

The verdict of the jury might have been foreseen when the Chief Justice allowed himself to be drawn into an argument with Hamilton. De Lancey was then a young man without much experience in his profession, and was no match for Hamilton, who was near the close of a long and brilliant career, while his age and manner were as convincing to the jury as his eloquence.

A dinner was given to Hamilton in the evening at the Black Horse Tavern. This famous old inn was then situated in Smith street (now William). In 1750 it was in Queen street (now Pearl street.) Zenger says, "Above forty of the Citizens entertained Mr. *Hamilton* at the black Horse that Day at Dinner, to express their Acknowledgment of his Generosity on this Occasion, and at his Departure next Day he was saluted with the great guns of several Ships in the Harbour, as a publick Testimony of the glorious Defense he made in the Cause of Liberty in this Province."

At a meeting of the Common Council held on September 16, 1735, it was ordered that Hamilton be presented with the Freedom of the Corporation. A committee appointed for the purpose brought in later an appropriate resolution, and also reported, "*that sundry of the Members of this Corporation and*

Gentlemen of this City have voluntarily Contributed sufficient for a Gold Box of five Ounces and a half Inclosing the Seal of said Freedom; Upon the Lid of which, we are of Opinion should be engraved the Arms of the City of New-York."

In addition to the arms of the city the cover bore the following motto, "DEMERSÆ LEGES-TIMEFACTA LIBERTAS-HAEC TANDEM EMERGUNT," and on the inside of the cover, "NON NUMMIS,-VIRTUTE PARATUR," and part of Tully's wish, "ITA CUIQUE EVENIAT, UT DE REPUBLICA MERUIT."

The box and the resolution were taken to Philadelphia by Alderman Stephen Bayard and by him presented to Hamilton, " who gratefully accepted it."

There was great interest taken in the trial throughout the country and the papers in Boston and Philadelphia published full accounts of the proceedings. The first edition entitled " A brief Narrative of the Cafe and Tryal of *John Peter Zenger*, Printer of the *New-York weekly Journal*," was published by Zenger in 1736. It was scattered broadcast and many copies were sent to London. It is a folio of forty pages and now very rare. It was edited by James Alexander, as appears by the following letter from Andrew Hamilton :

" I have at last Sent you my Draught of Mr. Zenger's tryall. When I first wrote you I intended to revise it by my Notes but being interrupted with Business I neglected and at last being in hopes that you was not like to obtain Mr. Chambers's and Mr. Atty.'s Argument, your design of publication was over and so it lay over until our Assembly broke up ye last of Feb-

ruary. Since then we have had Court every day and rather than give you ye trouble of writing again I have Sent it ill done as it is. I have had no time to read it over but once since it was finished. I wrote it by half sheets and copied it as fast as I wrote. The meaning of all this is to beg of you to alter and Correct it agreeable to your own Mind."

There were four editions of the trial published in London in 1738, one edition in Boston, one in Lancaster, Pennsylvania, and it was republished in 1770 in New York when McDougal was tried.

Zenger was made public printer in 1737 as a reward for his troubles, and in 1738 was appointed to the same office in New Jersey. He was naturalized in New Jersey in 1738.

In the fourth volume of the Colonial Documents of the State of New York it is stated on page 1042 that "He was a printer by trade; in arrears to a small amount as collector of taxes in the city, and the Assembly had refused to allow him to discharge the small debt by doing public printing enough to cover it"—a lively instance of ingratitude for the services he had rendered. His absence from the City, however, could not have been very prolonged, for he continued printing the "Journal" until his death, which occurred on July 28, 1746. His obituary was published as follows in the "Evening Post" of August 4, 1746.

"On Monday Evening last, departed this Life, Mr. *John Peter Zenger* Printer, in the 49 Year of his Age; He has left a Wife and six Children behind, he was a loving Husband, and a tender Father,

Sr Jr

I have at last sent you my draught of Mr Zinger's tryall
when I first ~~wed~~ yours I intended to revise it by my Notes
but being interrupted with Business I neglected and at
last being in hopes as you was not like to obtain
Mr Chambers and Mr attys argument your design of
publication was over ~~but~~ and so it lay over till our
assembly broke up ye Last of ~~March~~ February Since which we have
had Courts every day and rather than give you ye trouble
of writing again I have sent it ill done as it is —
I have had no time to read it over but our sind it was
ffinished I wrote it by half sheets and and Copied it
as ffast as I wrote the meaning of all this is to beg of
you to alter and Correct it agreeable to your own Mind
I would be glad that Capt Norris would take ye trouble
to Correct ye Language for it wants it much You must
add ye Referrences to ye ~~tryalls~~ state tryalls I am obliged
to send it as fair as Burlington after ye post not being able
to get thro' it sooner

Be so good as to let me know by the Next post what you
think Mr Hamilton is doing and how I may get my Mony
notwithstanding all his ffair promisses that day I Last you at
Amboy I have never ~~fair~~ heard from him since it so
good as to advise me ffreely

ye ffrd and humble Sr

March 16th 1735/6

A. Hamilton

FACSIMILE OF LETTER FROM ANDREW HAMILTON TO JAMES ALEXANDER, ACCOMPANYING NOTES OF THE TRIAL.

and his Death is much lamented by his Family and Relations."

He is said to have been buried in Trinity Churchyard. The record of the descendants of the Zenger family shows none in the male line. Nothing is known of Johannes, the brother of the printer, and his sister Anna Catharina, who was married September 16, 1727, to Frederick Becker, and died without issue. John, son of the printer by his first wife, married in 1741 Anneke Lynssen, but it does not appear that he left any children who came to maturity. Pieter, son of the second marriage, married October 26, 1751, Brachy Montange of Harlem, but there is no record of any children of this marriage. Elizabeth, born 1726, one of the daughters of the printer's second marriage, married July 6, 1745, John George Kook, a weaver, and left descendants. She died in 1817. Another daughter, Catherine, born 1738, died September 16, 1836, at the advanced age of ninety-eight; she married Matthias Lane, born 1736, died August 14, 1801, and they also left descendants. The Lanes lived in Camden, New Jersey, and are buried there in the Evergreen Cemetery.

Thomas, in his "History of Printing," says, "One of his [Zenger's] daughters was mistress of a tavern in New York in 1758," but which one it was does not appear. There were three other children of John Peter Zenger by his second marriage, who apparently died young or unmarried.

His wife published the "Journal" from the time of her husband's death until December, 1748, when it was taken over by John Zenger, the son of the

first marriage. He continued it until 1751, when the publication ceased entirely.

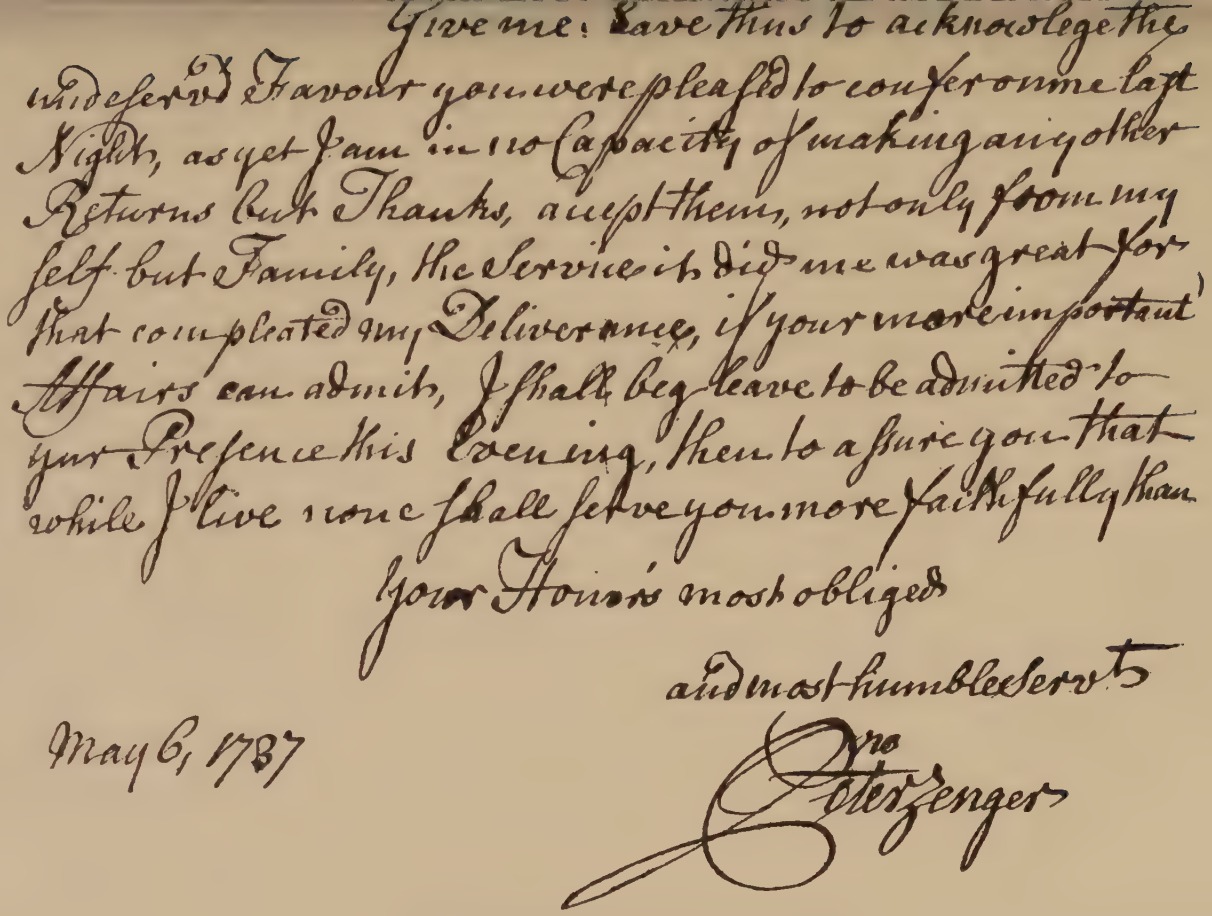
As to the legal and practical result of the trial it is interesting to review briefly the origin and development of the law of libel. When the art of printing was invented, the press immediately became subjected to a severe censorship, a power assumed first by the church and later by the state. This authority was exercised by the Star Chamber during the reign of Elizabeth, and when that body was done away with in 1641, Parliament exercised the right with almost the same degree of severity. Under the Licensing Act of 1662, the control of the press was taken charge of by the Crown. This Act, limited to three years, was, on its expiration, renewed until 1679, and in 1685 it was renewed again for seven years more. But political censorship finally ceased in 1695, when the House of Commons failed to renew the Act by means of which the right was exercised.

After the censorship was thus done away with, the only restraints upon the right to freedom of discussion were those imposed by the law of libel, which became enforceable by the judgments of courts founded on the verdict of juries, but these restraints were practically as despotic as the edicts of the Star Chamber, since the rights and duties of judges and juries remained unsettled. For, though the law of the country entitled a defendant to a trial by jury, yet as the judges were allowed to pass upon both the facts and the law, the result was a practical denial of the right of trial. This state of affairs con-

tinued until 1791, when the Libel Act of Fox passed the Commons, establishing the principle that in cases of libel the jury were to be the judges of both the law and the fact, and by this means the judicial tyranny which succeeded the censorship was done away with forever.

The trial of Zenger first established in North America the principle that in prosecution for libel the jury were the judges of both the law and the facts. The liberty of the press was secure from assault and the people became equipped with the most powerful weapon for successfully combating arbitrary power, the right of freely criticizing the conduct of public men, more than fifty years before the celebrated trial of "Junius" gave the same privilege to the people of England.

By degrees the Province of New York resumed its state of former quiet. Cosby died in March, 1736, and was succeeded by George Clarke, a man of more liberal mind. But the old conditions were changed, the result of the trial had imbued the people with a new spirit; henceforth they were united in the struggle against governmental oppression, and as Gouverneur Morris has well said: "The trial of Zenger in 1735 was the germ of American freedom, the morning star of that liberty which subsequently revolutionized America."



Give me Leave thus to acknowledge the undeserved Favour you were pleased to confer on me last Night, as yet I am in no Capacity of making any other Returns but Thanks, accept them, not only from myself but Family, the Service it's did me was great for that compleated my Deliverance, if your more important Affairs can admit, I shall beg leave to be admitted to your Presence this Evening, then to assure you that while I live none shall serve you more faithfully than

Your Honors most obliged

and most humble Servt

May 6, 1737

Jno Peter Zenger

FACSIMILE OF ZENGER'S LETTER OF THANKS.

BIBLIOGRAPHY
OF THE
ISSUES OF THE ZENGER PRESS
1725–1751

EXPLANATION OF ABBREVIATIONS

The capital letters (as below) following each title indicate the Public Libraries (and in a few cases private collections) which contain the several items:

B. M.	British Museum.
B. P. L.	Boston Public Library.
C. E. N.	Charles Eliot Norton, Cambridge, Mass.
C. H. S.	Connecticut Historical Society, Hartford, Conn.
E. D. C.	E. Dwight Church, New York.
H. S. P.	Historical Society of Pennsylvania.
H. U.	Harvard University.
L.	New York Public Library, Lenox Collection.
L. C. P.	Library Company of Philadelphia.
N. J. H. S.	New Jersey Historical Society.
N. J. S. L.	New Jersey State Library.
N. Y. H. S.	New York Historical Society.
N. Y. S. L.	New York State Library.
W. N.	William Nelson, Paterson, N. J.
Ed.	Editor.

No effort has been made to locate all known copies.

KLAGTE

Van Eenige Leeden der

NEDERDUYTSE HERVORMDE KERK,

Woonende op *Raretans, &c.*, in de Provincie van *NIEU-JERSEY*, in *NOORD-AMERICA*,

Onder de Kroon van *Groot-Brittanje*.

Over het GEDRAG, Alsmede en Elders,

VAN

Do. *THEODORUS JACOBUS FRILINGHUISEN*,

Met syn Kerken-Raaden.

TEN

ANTWOORD

Op hunne

Ban-Dreygende Daag-Brieven, &c.

AAN

Alle *Liefhebbers der Waarheyd*, ter onderstok, voorgestelt,

Hoe Die Gegrond zyn, of Niet.

MET een

Noodige Voor-Reeden, tot opheldering van de *Klagte*.

Uytgegeven Door

De Gezamentlyke der gemelde Leeden.

Te Nieu-York, Gedrukt by *William Bradford* en *J. Peter Zenger*. 1729.

BIBLIOGRAPHY

WILLIAM BRADFORD AND JOHN PETER ZENGER

1725

LAGTE/Van Eenige Leeden der/NEDER-DUYTSE HERVORMDE KERK,/Woonnede op *Raretans*, *&c.*, in de Provincie van / *NIEU-JERSEY*, in *NOORD-AMERICA*,/ Onder de Kroon van *Groot-Brittanje.*/Over het GEDRAG, Aldaar en Elders, / VAN / Do. *THEODORUS JACOBUS FRILINGHUISEN*,/Met syn Kerken-Raaden./TEN/ ANTWOORD/Op hunne/*Ban-Dreygende Daag-Brieven*, &c./ AAN/Alle *Liefhebbers der Waarheyd*, ter ondersoek, voorgesteld, /Hoe Die Gegrond zyn, of Niet./MET een/*Noodige Voor-Reeden*, tot opheldering van de *Klagte.*/Uytgegeven Door/*De Gevolmagtigden der gemelde Leeden.*/[Small square printer's ornament.] / Te *Nieu-York*, Gedrukt by *William Bradford* en *J. Peter Zenger.* 1725./

4to, 86 leaves.

Collation : Title, 1 page ; blank, 1 page ; "Verklaaring," 4 pages ; "Voor de Vitgeevers Van deze Klagte," 3 pages "Op de Klagte zelf," 1 page ; "Voor-Reeden," etc., pages [i]–xvi; text, beginning "Eerste Daagbrief," pages 1–144; Errata, middle of page 144–146. L.

JOHN PETER ZENGER

1726

DE AANBIDDELYKE/WEGEN GODS/in zyne/*Souveraine Bestieringe*,/Besonder over/DE/MACHTEN deser WEERELD, / Verklaart en toegepast / IN / DRIE PREDICATIEN,/

DOOR/*PETRUS VAN DRIESSEN*, V. D. M./Te NIEUW-ALBANIA./[Printer's ornament.]/Te NIEUW-YORK,/Gedrukt by *J. PIETER ZENGER*, MDCCXXVI.

4to, 46 leaves.

Collation: Title, 1 page, printed in black and red; "Immobilis ad Immobile Numen," etc., 5 lines, printed in red, 1 page; "Opdragt," 8 pages; text, pages [1]–79; blank, page [80]; Errata, page [81]; blank, page [82]. L.

THE ADORABLE/WAYS of GOD/In His/*Sovereign Government*,/Particularly over/THE/POWERS of this WORLD,/Explained and Applied/IN/THREE SERMONS./By *PETRUS VAN DRIESSEN*, V. D. M./At *NEW-ALBANY*./NEW-YORK:/Printed by *John Peter Zenger*, MDCCXXVI.

4to, 43 leaves.

Collation: Title, 1 page; "Immobilis ad Immobile Numen," 1 page; Dedication "To his Excellency William Burnet," 7 pages; blank, 1 page; text, pages [1]–75; blank, page [76]. Pages 54, 65, 70, 71 and 72 misnumbered 56, 59, 58, 57 and 60. Pages 68 and 69 not numbered. L.

TSAMENSHRAAK,/Tusschen/*Impetus*, *Legatus* en *Temperatus*.

4to, 12 leaves.

Collation: Text, pages 3–24. H. S. P.
The only copy traced lacks the title-leaf. The above is at the top of page 3.

THE/INTEREST/OF THE/COUNTRY/In Laying/DUTIES:/OR/A DISCOURSE, Shewing how/Duties on some Sorts of Mer-/chandize may make the Pro-/vince of New-York richer than/it would be without them./Sold by J. Peter Zenger, near the City-/Hall in New-York. Price 6.d./

8vo, 18 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages 3–35; blank, page [36]. Ed.

SAMENSPRAAK/Over de/KLAGHTE/DER/RARITANDERS;/So in't Gemeen, als wel in't Beson-/der, wegens het gene in die ter/neder gestelt isten Laste/VAN/CORNELIUS van SANTVOORD,/Predikant op Staten-Eilant./Meteen/Na-

schrift tot Vrede./[Printer's ornament.]/TE NIEUW-YORK,/ Gedrukt by J. Peter Zenger, 1726./

8vo, 107 leaves.

Collation: Title, 1 page; blank, 1 page; "Bericht aan der Leeser," 2 pages; text, pages 1–194; "Naschrift tot Vrede," pages i–xiv; Errata, 1 page; blank, 1 page. W. N.

VERDEEDIGING/VAN/D. BERNARDUS FREEMAN,/ WEGENS/HET gene hem voornaamlyk ten Laste/gelegt word in zeeker BOEK,/GENAAMT KLAGTE, &c./[Printer's ornament.]/Te NIEUW-YORK,/Gedrukt by *J. Peter Zenger*, in 't Jaar,/MDCCXXVI./

8vo.

Collation: Title and text, pages 1–125; [1].
Not seen. Title furnished by Mr. Wilberforce Eames.

1727

THE/CHARGE/Given by The/CHIEF JUSTICE/OF THE/*Province* of NEW-YORK,/TO THE/GRAND JURY/ OF/The CITY Of NEW-YORK,/In March Term, 1726–7./ *Printed at the Request of the said Grand Jury./New-York*, Printed and sold by *John Peter Zenger*, 1727. (pr. 6d.)/

4to, 10 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages [3]–19; blank, page [20]. H. S. P.

(1)/To the Honourable/ADOLPH PHILIPSE, Esq;/As it is a noble and brave thing to defend ones country against the usur-/ pations [etc.].

Folio, 1 leaf.

Collation: Text, pages 1 and 2. L.

Sir,/In my Former I frankly informed you in what Manner your Adver-/saries [etc.].

4to, 2 leaves.

Collation: No separate title-page. Text, pages [1]–[3]; page [4] blank. Signed at bottom of page [3], "I am your's &c." L.
A second letter to Adolph Philipse.

JOHN PETER ZENGER

1728

Willem Christoffel Berkenmeyers/Bedienaars des Heyligen Euangeliums van de/*Nederduytsche* Gemeente/TE/*Nieuw-York*, *Albanie* on daar ontrent,/Insgelyks/der Parochye der *Palatynen* by *Quassayk*,/ *DE ONVERANDERDE* A. C. *TOEGEDAAN*,/ GERTOUWE/HERDER-en WACHTER-/STEM/Ana de Hoog- en Neder-Duitsche Lutheriaanen/in dese Gewesten,/eenstemmig te zyn vertoont/met *twee Brieven* en andere Redenen *Lutherscher Theologanten.*/AANGAANDE/'t *Van Dierensche* Beroep,/EN /De *Henkelsche* Bevestiging./Te *Nieuw-York*, by *J. Peter Zenger*, A.C. MDCCXXVIII.

4to, 90 leaves.

Collation: Title, 1 page; "I Timoth. IV., 1, 2" [etc.], 1 page; blank, 1 page; "Opdracht" [etc.], 1 page; text, pages 1–150, with numerous errors in the pagination; Postscript, 12 pages; "Druck Feilen," 10 lines, 1 page; blank, 1 page. H. U.

1729

REMARKS/UPON/A DISCOURSE/INTITULED/AN OVERTURE/Presented to the REVEREND SYNOD/of Dissenting MINISTERS sitting/in Philadelphia, in the Month of Sep-/tember, 1728./In a Letter to the Author./By a Member of the said SYNOD./[Jonathan Dickinson.]/Printed by J. Peter Zenger, in Smith-Street,/in New York, 1729./

8vo, 16 leaves.

Collation: Title, p. [1]; blank, p. [2]; text, pages 3–32. B. P. L.

EEN TROUWHERTIG/VERTOOG/VAN/*Een waare Rechtveerdige*,/IN TEGENSTELLINGE VAN/*Een Godloose Sondaar.*/Voorgestelt IN/*Twee Predikatien*,/Over I *Pet.* IV. 18./ Door *Do. Theodorus Jacobus Frilinghuisen*, Predi-/kant der Gereformeerde Gemeentens op de/RARITAN./Uit gegeeven volgens de Vermaaning van den/Propheet *Jesaias*, Cap. III. 10, 11./*Segget den Rechtveerdigen dat het* (hem) *wel gaan/sal dat sy de Vrucht haarer Werken sullen eeten./Wee den Godloosen, het sal* (hem) *quaalyk gaan, want/de Vergeldinge syner handen sal hem geschieden.*/ Nieuw-York, Gedrukt voor *S. Gerritsen*, en *J. D./Puy*, by *John Peter Zenger*, MDCXXIX./

8vo, 30 leaves.

Collation: Title, page [1]; verses, beginning: "O! Snood verkeerd

Geslacht van ons Nieuw Nederland", page [2], text, beginning "Een Trouwhertig Vertoog;" pages [3]–59; Errata, page [60].

The imprint has the date 1629 instead of 1729. L.

1730

DE/HEERLYKHEIT der GENADE/VAN DEN/EENIGEN *en* DRIE-EENIGEN / VERBONDS-GOD:/Volgens de Gronden/VAN DEN / HEIDELBERGSCHEN / CATECHISMUS,/TOT/Vorderinge en Opbouw in Gods-Keniffe/en waare Heiligmaakinge,/VOOR/*Het Euangelische Verbonds-Volk verklaart,be-/vestigd en toegepast, met Vraagen en Antwoorden.*/DOOR/PETRUS VAN DRIESSEN, *V.D.M./te Nieuw-Albanien/* [Printer's ornament.] Gedrukt te *Nieuw-York*, by *J. Peter Zenger*,/MDCCXXX./

8vo, 235 leaves.

Collation : Title, 1 page; blank, 1 page; "Verklaaring", 2 pages, dated at end "Nieuw-York, den 24 Junii, Anno 1730." and signed "G. D. Bois" and "Henricus Boel."; verses "Op het eerste Deel de Heerlykheit der Genade," 2 pages, signed at end "Jacob Goelet."; "Opdracht Aan de Bloejende Gemeinte te Nieuw Albanien", pages [1]–xx, dated at end "Albany den 26 Sept., 1729," and signed "Petrus Van Driessen."; text, pages [1]–444. Page 194 is wrongly numbered 94; 319 is 219 and 355 is 323. N. Y. H. S.

KORTE SCHETS/En ONTWERP van de voorname/Grond-Regelen/DER/LEERSTUKKEN/VAN DE/*Hervormde Nederduytsche*/KERK./Kort en beknoptelyk 'tsamen gesteld/tot onderwys en leering van de Jeugt, als der aankommende Leedemaaten./DOOR/PETRUS VAS, Dienaar Jesu Christi,/in de Gemeinte tot KINGSTON. / *Den tweeden Druk.*/ [Printer's ornament.]/ Gedrukt te *Nieuw-York*, by *J. Pieter Zenger*/MDCCXXX./

12mo.

The only copy traced is imperfect, consisting of title, 1 page; blank, 1 page prefatory poem, 1 page, the leaf containing page [4] being pasted down upon the marbled paper cover of a copy of Venema's "Arithmetica." Remainder of book is lacking. N. Y. S. L.

Berkenmeyer (W. C.). Consilium in Arena, oder Mitleidens volle Antwort auf das Bitt-Schreiben der Hoch-Teutsch-Luthrischen Gemeinde im Camp. Nieuw York.

4to.

Not seen. Title taken from Sabin, Vol. II, p. 94, No. 4886. This was written by Berkenmeyer and as Zenger printed one of his books in 1728 and John Zenger another in 1749, it is very probable that Zenger printed this one also.

ARITHMETICA/OF/Cyffer-Konst,/Volgens de Munten Maten en/Gewigten, te NIEU-YORK,/gebruykelyk/Als Mede/ Een kort ontwerp van de/ALGEBRA,/Opgestelt door/PIETER VENEMA,/*Mr.* in de Mathesis en Schryf-Konst/[Printer's ornament]/NIEU-YORK,/Gedruckt voor *Jacob Goelet*,by de/Oude-Slip, by *J. Peter Zenger*,/MDCCXXX./

12mo, 63 leaves.

Collation: Title, 1 page; blank, 1 page; preface, 2 pages; errata, 1 page; blank, 1 page; text, pages 1–120. N. Y. S. L., N. Y. H. S.

Letter to a Parishioner, which J. Mott Pretended to answer in a Pamphlet entitled The Great Work of Christ's Spirit, &c. New-York; Printed by John Peter Zenger. 1730?

sm. 8vo.

Not seen. Title taken from Sabin, Vol. X, p. 262, No. 40421. Probably by Samuel Johnson.

1731

Necessarius/THE continuance of an able and Godly/Minister very needful to a People./A/SERMON/Preached at the Funeral of the Reve-/rend Mr. *JOHN DAVENPORT*, / late Pastor of the Church in *Stam/ford;* who died on *Fryday* Febr. 5,/1730–1, in the 62 Year of his Age,/and 36 of his Ministry: And was/decently interred on *Munday* folow-/ing./By the Rev. *SAMUEL COOKE*, Pastor of the/Church of Christ in *Stratfield./2 Reg.* ii 12. *My Father, my Father! the Chariot of/Israel, and the Horsemen thereof./* Printed by *J. P. Zenger* in *New-York*, 1731./

8vo, 32 leaves.

Collation: Pages 1 and 2 lacking in the only copy examined, perhaps a half-title; title, page [3]; blank, page [4]; text, pages [5]–62, Pages 63–64 lacking in the copy examined, probably blank. N. Y. H. S.

[Two rows of printer's ornaments.] GEORGE the second, by the Grace of God, of *Great Brittain*,/*France* and *Ireland*, King, Defender of the Faith, *&c.*/To all to whom/these Presents shall come, Greeting.

Folio, 4 leaves.

Collation: No separate title-page. Text pages [1]–8. Dated at end "at Fort George in the City of New-York, the eighth day of June, in the fourth year

of our Reign, Annoq; Domini, One Thousand seven Hundred and Thirty-one," and signed "Clarke." Following the document proper is an extract from the original Letters Patent, 9 lines, with heading, 2 lines. N. Y. H. S.

Patent granting to Thomas Hanly, Nathan St. John and others, four tracts of land known as the Oblong, situated on the partition line between New York and Connecticut. "To Zenger for 200 copies of our patent with paper £4, 7,0." *Accounts of the Equivalent Land Co.*, p. 5.

1732

A/True and Just/VINDICATION/OF/Mr *Alexander Campbell*,/FROM/The several Aspersions cast upon him, and that/Load of undeserved Calumny and Reproach, he at/present lyes under./ In a Letter directed, *To* Edmund, *Lord Bishop/of* LONDON./ *NEW-YORK*:/Printed by *John Peter Zenger*, MDCCXXXII./

12mo, printed in fours.

Collation: Title, p. [1]; blank, p. [2]; text, pp. [3]–14; blank, pages [15–16]. Dated at end "New-York, July 30, 1732." and signed "Alex. Campbell." L.

A/SUPPLEMENT/TO THE/VINDICATION/OF/Mr. *Alex. Campbell:*/WHEREIN/All the Objections made to the said Vindica-/tion are answered, particularly, those in a/late Paper, called, *Mr Noxons Observa-/tions &c.*/[Row of printer's ornaments.]/*New-York*,/Printed by *J. Peter Zenger*, in/*Smith-Street.*/

12mo, printed in fours.

Collation: Title, page [1]; blank, page [2]; text, pages [3]–35; blank, page [36]. Dated at end (page 35), "New-York, August 15, 1732." and signed "Alex. Campbell." L.

Mr. *NOXON'S*/OBSERVATIONS/UPON/Parson *Campbell's* Vindication./

[Colophon:] NEW-YORK, Printed by *John Peter Zenger*, M DCC XXXII./

Folio, 1 leaf.

Collation: Text, 1 page; blank, 1 page. The above heading at top, extending across the page; text below, in two columns, beginning:

"I Resolve (as you have done in | the 12th Page of your Vindication) | [etc.]" L.

[Two rows of printer's ornaments.] *Maxima libertatis custodia est, ut magna Imperia diurturna/non sint, & temporis modus imponatur quibus juris imponi/non potest.* Mammerc. *apud* Liv./

[Colophon:] *NEW-YORK*, printed by *John Peter Zenger*, M DCC XXXII./

Folio, 1 leaf.

Collation: Text, pages [1] and [2]. The above heading is at top of page [1] extending across the page. The text is in two columns and begins: "If ever we shall lose our Liberties in | Great Britain [etc.]" Signed at end, above the colophon, "M. B." L.

[Two rows of printer s ornaments.] *Nullum tempus, ulla prescriptio occurit veritati.* Tertul./*Lex est sanctio recta, jubens honesta, prohibens contraria.* Cicero.

Folio, 2 leaves.

Collation: No separate title-page. Text, beginning: "Men are subject to Errors, and it is the Work of the Best and | Wisest" etc., signed "Yonr humble Servant. | John Sydney." pages [1] and [4]; pages 2 and 3 are blank. L.

The above is the description of the only copy known. It is evidently a proof and it was probably the intention to issue the sheet as a single leaf, printed on both sides.

[One row of printer's ornaments.]/*Vincit amor patriæ*, Virg./

Folio, 1 leaf.

Collation: Text, pages [1] and [2]. The row of printer's ornaments extends across the page. Text is in two columns, the above heading being at top of the first column of page [1]. Text begins "Some Gentlemen, who are other- | wise Men of Sense, [etc.]" Signed at end, "Andrew Fletcher." L.

Advising annual elections to the Assembly.

[Three rows of printer's ornaments.]/O Liberty, thou Goddess heavenly bright!/Profuse of Bliss, and pregnant with Delight!/Eternal Pleasures in thy Presence Reign,/And smiling Plenty leads thy wanton Train./Eas'd of its Load, Subjection grows more light,/And Poverty looks chearful in thy Sight./Thou mak'st the gloomy Face of Nature gay,/Giv'st Beauty to the Sun, and Pleasure to the Day./'Tis Liberty that crowns *Brittania's* Isle,/And makes her barren Rocks and her bleak Moun-/tains smile./*Addison.*/

Folio, 2 leaves.

Collation: No separate title-page. Text, pages [1]–3; page [4] blank. The above verses quoted from Addison, printed in large type at top of page [1]; text in long lines beginning:

"There is nothing in which the Generality of Mankind are so much | mistaken, as when they talk of Government [etc.]" Signed at end, "Portius."

On the necessity of frequent elections. L.

A LETTER/From a Gentleman in in the COUNTRY/to his Friend in TOWN./

Folio, 1 leaf.

Collation: Text, page [1], page [2] blank. Heading as above at top. Text, printed in long lines, signed, at bottom, "Robt. Dissolution."

On Cosby's first Assembly. L., N. Y. S. L.

[One row of printer's ornaments.]/*To F—H—Esq;*/

Folio, 2 leaves.

Collation: No separate title-page. Text, pages [1]–4. Printed in two columns, the above heading in small type at the top of the first column of page [1]. Text begins: "I am very much oblig'd to you/for your sincere Wishes, and do/[etc.]" L.

Addressed to Francis Harison, apparently, and in defence of Alexander Campbell.

(1)/*To the Reverend Mr.* Vesey *and his two/Subalterns, viz.* Tom Pert *the Beotian,/and Clumsy* Ralph *the Cimmerian.*/

Folio, 2 leaves

Collation: No separate title-page. Text, pages 1–4. The above heading is at top of page 1. The text is in long lines and begins: "It is somewhat surprizing that Gentlemen who pretend to Learning/and Discretion," [etc.] L.

1733

[Four rows of printer's ornaments.]/To the Author of those Intelligencers/printed at *Dublin*, to which is pre-/fix'd the following Motto,/*Omne vafer vitium ridenti* Flaccus *amico/Tangit, & admissus circum præcordia ludit./Persius.*/Being a Defence of the Plantations against the/virulent Aspersions of that Writer, and such/as copy after him./[One row of printer's ornaments.]/

[Colophon:] NEW-YORK, Printed and Sold By *J. Peter Zenger.* 1733./

Folio, 5 leaves.

Collation: No separate title-page. Text pages 1–10. Heading as above at top of page 1. Signed at end "Roscommon." L.

THE/ARGUMENTS/OF THE/COUNCIL for the DEFENDANT,/In Support of/A Plea to the JURISDICTION,/Pleaded to a Bill filed in a Course of EQUITY,/At the SUIT of/The

JOHN PETER ZENGER

ATTORNEY GENERAL,Complainant,/AGAINST/RIP VAN DAM, Defendant,/IN THE/Supream Court of/NEW-YORK./ (Printers' Ornament) *NEW-YORK:*/Printed by *JOHN PETER ZENGER*, M,DCC,XXXIII./

Folio, 27 leaves.

Collation: Title, 1 page; blank, 1 page; text, pages 1–51, with Errata, 5 lines at bottom of page 51; page [52] blank. L.

The latest date of any of the documents included seems to be April 9, 1733. This portion was probably published during the summer.

[One row of printer's ornaments.] The Proceedings of *Rip Van Dam*, Esq; in order/for obtaining Equal Justice of His Excellency/*William Cosby*, Esq;/[Colophon at bottom of p. 63:]/*New York :* Printed and Sold by *John Peter Zenger*, where also/is to be sold, *The Argument of* Van Dam's *Couucil in Support of/his Plea to the Jurisdiction of the Supream Court of* New-York./ MDCCXXXIII./

Folio, 6 leaves

Collation: No separate title-page. Text, pages 53–63; page 64 blank. Heading in large type as above at top of page 53. Text begins, "My Plea being over-ruled, as by the Minutes of Court and Ar-/guments" [etc]. Signed at end "Rip Van Dam." L.

The latest document included is dated October 22. This piece was advertised in the *New York Weekly Journal*, No. 5, Dec. 3, 1733, as follows :

"There is now printing and will shortly be published, and to be sold by the Printer of this Paper, *The Proceedings of* Rip Van Dam *Esq; in order for* obtaining equal Justice of His Excellency William Cosby, *Esq;* by which it seemeth that said *Van Dam* conceives an Attack has been made in this Province on *the Priviledge of* JURIES *in the Case where it is of greatest Value, to witt, between* THE KING and HIS SUBJECTS, or rather, GOVERNOUR and PEOPLE : it contains three Sheets, price 9d."

Eleutherius Enervatus;/OR/An Answer to a Pamphlet, Intitu-/led, The divine Right of Presbyte-/rian Ordination, &c., argued./ Done by way of Dialogue/BETWEEN/Eusebius and Eleutherius, together with/two Letters upon this Subject, some/Time agoe sent to the supposed Auther/of that Pamphlet./Isai. 65. 2.5. I have spread out my Hands all the Day/unto a rebellious People, which walketh in a way that/was not good, after their own Thoughts, which say stand/ by thy self, come not near to me, for I am holier than thou./These are

a smoke in my Nose; a Fire that Burneth all the/Day./NEW-YORK /Printed by J. Peter Zenger,/MDCCXXXIII./

8vo, 58 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages 3–115; blank page [116]. B. P. L.

[Two rows of printer's ornaments.]/Farther proceedings concerning the Case of *Rip/Van Dam*, Esqr. at the Suit of the Attorney/General being for the Use of his Excellency/Coll. *Cosby* Governour of this Province, in/the Equity Side of the *Exchequer*./

Folio, 2 leaves.

Collation: No separate title-page. Text pages 65–[68], page 68 being wrongly numbered 80. Heading, as above, in large type at top of page 65. Text begins "Some People have been pleased to blame me for not accepting of the /Accommodation [etc]" Signed at bottom of page [68] "Rip Van Dam." L.

As one document included is dated "19th Day of January, 1733–4" this was printed, probably in January, or in February at the latest.

A/LETTER/From a Gentleman in New-York, to his/Friend in London./

[Colophon:] America : Printed in the Year 1733./

4to, 2 leaves.

Collation: No separate title-page. Text, pages 1–3, blank, p. [4]. Signed at end "Sir,/Your most Humble Servant,/P. P." N.Y.S.L.

A criticism of Cosby for taking a present from the Assembly.

A/LETTER/FROM/*A Minister of the Church*/OF/ENGLAND/TO HIS/*Dissenting Parishioners*. / CONTAINING / A brief Answer to the most material Objec-/tions against the Establish'd Church that/are to be found in De Laune's Plea, The/Answer to the Bishop of Derry, The plain/Reasons for separating, &c. and others./ Together with plain Reasons for Confor-/mity to the Church of *England*./1 Kings 18, 21. *How long halt ye between two Opinions*./1 Cor. 14, 40. *Let all Things be done decently and in* (or ac-/cording to) *Order*./1 Pet. 2, 13. *Be subject to every Ordinance of Man for the/Lord's Sake*./ *New-York*, Printed by *John Peter Zenger*, 1733./

12mo, printed in fours; 16 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages 3–31; blank, page [32]. N. Y. S. L.

Probably by Samuel Johnson, D.D.

A PROTESTATION. [1733]

Folio, 3 leaves.

Collation: No separate title-page. Text, pages 1–5; blank, page [6]. Above heading at top of page 1. Dated at end "this Twenty-sixth Day of March, . . . 1733," and signed "Alex. Campbell." Signature of Notary and postscript, 17 lines, at end. L.

Protestation of Alexander Campbell against his examination on charges preferred to the Bishop of London.

The Opinion and Argument of the Chief Justice of the Province of New-York.

A first edition of this piece must have been printed, but no copy has been found.

(1)/The Opinion and Argument of the/Chief Justice of the Province of *New-/York*, concerning the Jurisdiction of the/supream Court of the said Province,/*to determine Causes in a Course of Equity./ The Second Edition Corrected and Amended.*/To his Excellency *WILLIAM COSBY*, Esq;/[etc.].

[Colophon:] NEW-YORK, Printed and sold by *John Peter Zenger*, in Smith Street, 1733./

Folio, 8 leaves.

Collation: No separate title-page. Text, pages 1-15; page [16] blank. Heading, as above, at top of page 1. Colophon, as above, at bottom of page 15. Text is signed at end "Lewis Morris." L.

(2)/The Opinion and Argument of the/Chief Justice of the Province of *New-/York*, concerning the Jurisdiction of the/supream Court of the said Province,/*to determine Causes in a Course of Equity./ —The Second Edition Corrected.*/To his Excellency *WILLIAM COSBY*, Esq;/[etc.].

[Colophon:] NEW-YORK, Printed and Sold by *J. Peter Zenger*. 1733./

Folio, 8 leaves.

Collation: No separate title-page. Text, pages [1]–15; blank, page [16]. Page [1] is wrongly numbered 2. Heading, as above, at top of page [1]. Text is signed at end "Lewis Morris." Below the signature is a list of errata, six lines (where the edition is corrected: "for second read third.") and colophon, as above. L.

THE/VINDICATION./OF/*James Alexander*,/One of His Majesty's Council for the Province of *New-York*,/AND OF/

William Smith,/Attorney at Law,/From the Matters charged and suggested against/them in two Pamphlets lately published./THE ONE/A Paper addressed to the Mayor, Aldermen and Commonalty of/the City of *New-York*, by the Honourable *Francis Harrison*, Esq;/one of His Majestys Council, for the Province of *New-York*./ THE OTHER/A Report of the Committee of His Majesty's Council, to whom it/was referred to examine and make Inquiry touching a Letter found/in the House of Mr. *Alexander*, in *New-York* on Fryday the 1*st* of/*February*, 1732–3 *in order to make the fullest Discovery concerning the*/*Author of the same.*/ *To which is added*/A/SUPPLEMENT/CONTAINING/A brief Account of the Case of *William Trusdell*, Plaintiff,/AGAINST/the Honourable *Francis Harison*, Esq; Defendant,/For Arresting and Imprisoning the Plaintiff and keeping him 9 Weeks in Prison, at/the Suit of *Joseph Weldon*, without the Assent, Consent, or Knowledge of the/same *Joseph Weldon.*/Which Cause was tried in the Supream Court of *New-York*, on the 19*th* of *April*,/1734. wherein the Jury found for the Plaintiff *Trusdell l.*150. Damages, and/Costs of Suit./Printed by *John Peter Zenger*, and to be sold by him at his House in *Broad Street*, near/the upper End of the long Bridge, in *New-York*, 1733. Price 1*s.*/

Folio, 11 leaves.

Collation: Title, 1 page; Errata, 1 page; text, pages [1]–15; Supplement, pages, 16–20. L.

Advertised in the *New York Weekly Journal*, No. 27, dated May 6, 1734, as "This Day is published The Vindication of *James Alexander*," etc.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[/Colophon:] NEW-YORK: Printed and Sold by *John Peter Zenger*: By whom Subscriptions/for this Paper are taken in at three Shillings *per* Quarter./

Nine numbers. From No. 1, dated October 5 (a misprint for November 5), 1733, to No. 9, dated December 31, 1733. Each number consists of four pages.

1734

[Two rows of printer's ornaments.]/Some Observations on the Charge given/by the Honourable *James DeLancey*,/Esq; Chief Justice of the Province of/*NEW-YORK*, to the Grand Jury, the/15*th* Day of *January*, 1733./

[Colophon:] NEW-YORK./Printed and sold by *J. Peter Zenger*, Price 1*s*. 1733–4./

Folio, 9 leaves.

Collation: No separate title-page. Text, pages 1–18; page 8 being wrongly numbered 6. Heading, as above, at top of page 1; Colophon, as above, at bottom of page 18. Not signed. L.

This piece was advertised in the *New York Weekly Journal*, No. 20, March 18, 1733–4, as follows:

"THere are Printed and Sold, by the Publisher hereof some Observations on the Charge given by the Honorable *James De Lancey*, Esqr., Chief Justice of the Province of *New York*, to the grand Jury, on the 15th Day of *January* 1733, Price, 1*s*."

The above advertisement was repeated in Nos. 21 and 22, March 25 and April 1, 1734.

A Song made upon the Election of/new Magistrates for this City./To the tune of, To you fair Ladies now/on land/

Folio, 1 leaf.

Collation: Text, 1 page, blank, 1 page. Two songs printed in two columns, above heading being at top of first column. The second song begins near the bottom of the first column and continues, filling the second. It has the heading, "A Song made upon the foregoing/Occasion." Text and headings printed from italic types of two different founts.

L.; N. Y. S. L.; B. M.

[Two rows of printer's ornaments.]/*King's County, the 12th of September*, 1734./Mr. *Zenger*;/I Received two Days ago a Letter from some of my Brother Trades-Men in/the City, [etc.]

Folio, 2 leaves.

Collation: No separate title-page. Text, pages 1–3; page [4] blank. The above is the beginning of a letter, 7 lines, besides superscription and subscription, signed "Timothy Wheelwright." Following this, filling the remainder of page 1, all of page 2, and 7 lines (besides superscription) on page 3, is a second letter dated "New York, the 8th of September, 1734.", addressed to "Brother Chip;" and signed "John Chisel." Following this, on page 3, is a third letter, also addressed to "Brother Chip;" but signed "Timothy Wheelwright." It is undated. L.

— — *Ridentem dicere verum/Quid vetat?* — — —/

Narrow folio, 1 leaf, being one-half of an ordinary folio leaf.

Collation: Text, 1 page; blank, 1 page. Forty lines of verse beginning:

"In antient Days a Bestial Train
In Council met upon the Plain:"

printed in Roman type, the heading, as above, being in large black-faced italics. L.

Satirical verses directed against Francis Harison, apparently.

[Two rows of printer's ornaments.]/*DAMON* and *ALEXIS.*/ A/PASTORAL./[One row of printer's ornaments]. *Deus nobis haec Otia fecit.* Virg. [One row of printer's ornaments].

4to, 2 leaves.

Collation: No separate title-page. Text, pages [1] 4. Above heading is at the top of page [1]. L.

A Copy of a Letter from James Jackson/of Goshen, in Orange County, in the/Province of New York, to his Friend/in Ireland./

Folio, 2 leaves.

Collation: Text, pp. 1–4.

The only copy seen has the following endorsement in the handwriting of James Alexander: "1734–Aprile 13th. James Jackson brought me this, on reading of it I asked him who wrote it for him for it was very well wrote, he told me he had wrote the Substance of it himself, but it was Mr. P. had corrected it and put it in good form for him. I asked him who printed it, he said Zenger. I asked him the use he proposed by it, he said their Court was going to Sit, and he was threatened to be indicted, and he thought but to have his case publick for his Justification. I asked him if he had not been with Mr. Harrison upon this Matter, he said not till this Morning that he carried him a Coppy of it.

[Two rows of printer's ornaments.]/Heads of Articles of Complaint, made by *Rip Van/Dam*, Esq; on *Thursday* the 30*th* of *May*, 1734,/to the Committee of Grievances, appointed by/the General Assembly for the Province of *New-/York;* reduced to Writing by order of the said/Committee; who also ordered, that a Copy there-/of be served on the Chairman, and Mr Justice/*Phillipse.*/

Folio, 2 leaves.

Collation: No separate title-page. Text, pages 69–71; page [72] blank. Heading, as above, is at top of page 69. Signed at end "Rip Van Dam." L.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon] NEW-YORK: Printed and Sold by *John Peter Zenger*: By whom Subscriptions/for this Paper are taken at three Shillings *per* Quarter; and Advertisements at three/Shillings the first Week, and one Shilling every Week after:/

Fifty-one numbers. From No. 10, dated January 7, 1733, to No. 60, dated December 30, 1734. No number was issued for Nov. 18. Each number consists of four pages, except No. 21, March 25, which has six pages, and No. 27, May 6, which has two pages only.

1735

A/SERMON/Preach'd before the/Commission/OF THE/ SYNOD,/AT/PHILADELPHIA./ April 20th, 1735./ By E. PEMBERTON,/Pastor of the Presbyterian Church in the/City of New-York./NEW-YORK,/Printed by John Peter Zenger, 1735./

8vo, 11 leaves.

Collation: Title, p. [1]. blank, p. [2]; "To the Reverend Commission of the Synod." [etc.], pages 3–4; text, pages 5–21. B. P. L.

THE/ESPOUSALS/OR/A Passionate Perswasive to a Mar-/riage with the Lamb of God,/WHEREIN/The Sinners Misery/ AND / The Redeemers Glory/ is Unvailed in/A Sermon upon *Gen.* 24 49. Preach'd/at *N. Brunswyck*, *June* the 22d, 1735./By *Gilbert Tennent*, A.M./ And Minister of the Gospel there./ *Qui Christum neisct, nil est si cetera discit/ Qui Christum discit, sat est si cetera nescit.*/ NEW-YORK,/Printed by J. Peter Zenger, 1735./

8vo, 34 leaves.

Collation: Title, page [1]; blank, page [2]; "Courteous Reader," page 3; text, pages 4–66; "Advertisement," page 67; Errata, page [68]. H.S.P.

THE/Danger of forgetting GOD,/describ'd./AND/The Duty of Considering our Ways/explain'd./IN A/SERMON/ON Psalm L. 22/Preach'd at *New-York*, March 1735./By GILBERT TENNENT A.M./and Minister of the Gospel at *New-Brun-/swick* in *New-Jersey*./NEW-YORK./Printed by *John Peter Zenger*, 1735./.

12mo, printed in fours; 16 leaves, the last blank.

Collation: Title, page [1]; "Courteous Reader," page [2]; text, pages 3–30. H. S. P.

This piece was advertised in the *New York Weekly Journal*, No. 111, dated December 22, 1735, and in several later numbers, as follows :

" JUST published, and to be sold by the Printer hereof, a Sermon preached in *New-York*, last *March*, by the Rev. Mr. *Gilbert Tennent* of *New Brunswick*."

THE/CHARTER/OF THE/ CITY/OF/NEW-YORK;/ Printed by Order of the Mayor, Recor-/der, Aldermen and Com-

THE

Charter

OF THE

CITY

OF

NEW-YORK;

Printed by Order of the Mayor, Recorder, Aldermen and Commonalty of the City aforesaid.

TO WHICH IS ANNEXED,

The Act of the General Assembly Confirming the same.

NEW-YORK,
Printed by John Peter Zenger. 1735.

monalty of/the City aforesaid./TO WHICH IS ANNEXED,/ The Act of the General Assembly Confirming the/same [One row of printer's ornaments.]/NEW-YORK,/Printed by *John Peter Zenger*. 1735./

Folio, 26 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages 3–52. Pages 12 and 13 are wrongly numbered 10 and 11. L., N. Y. H. S.

Advertised in the *New York Weekly Journal*, No. 98, dated September 23, 1735, as follows:

"New York, Sept. 19.—This Day was published, and to be sold by the Printer hereof, THE/CHARTER/OF THE/CITY, of NEW-YORK/Containing 13 Sheets, price 3s."

Advertised, also, in several later numbers.

[Three rows of printer's ornaments.]/The Complaint of *James Alexander* and/*William Smith* to the Committee of/the General Assembly of the Colony/of *New-York*, *&c.*/

Folio, 10 leaves.

Collation: No separate title-page. Text, pages 1–19; page [20] blank. Heading, as above, is at the top of page 1. The affidavit at end is dated December 27, 1735. L.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon] NEW-YORK: Printed and Sold by *John Peter Zenger*: By whom Subscriptions/for this Paper are taken at three Shillings *per* Quarter; and Advertisements at three/Shillings the first Week, and one Shilling every Week after./

Fifty-two numbers. From No. 61, dated January 6, 1734, to No. 112, dated December 29, 1735. Each number consists of four pages, except No. 99, which has two pages only.

1736

THE/VANITY/OF/Human Institutions/IN THE/Worship of God./A/SERMON/Preached at Newark, June 2, 1736. To/which are added, some little Enlarge-/ments./By Jonathan Dickinson, M.A./Minister of the Gospel at Elizabeth/Town, in New-Jersey./[*Quotation from* Gal. iv. 9]/New-York, Printed by John Peter Zenger, 1736./

12mo.

Collation: Title, 1 page; blank, 1 page; "To the Presbyterian/Congregation at Newark in New-Jersey," pages i–vi; text, pages 1–32; "Errata," ten lines, a slip./

Not seen. Title furnished by Mr. Wilberforce Eames, from a copy formerly owned by Mrs. Daniel Van Pelt of Astoria, Long Island.

[One row of printer's ornaments.]/*New-York*, *March* 24, 1735, 6./WHEREAS on the 13*th* day of this Instant *March*,/*James Alexander*, Esq; one of his Majesty's Council/[etc.].

Folio, 1 leaf.

Collation: Text, 1 page; blank, 1 page. Printed in large type and in long lines, beginning as above. Signed at end "James Alexander." L.

SIR; New-York, *April* 26*th*, 1736./ WHEREAS on the 10*th* Day of *March* last, immediately u-/pon the Death of His Excellency *William Cosby*, Esq; [etc].

Folio, 1 leaf.

Collation: Text, 1 page; blank, 1 page. Printed in long lines, beginning as above. Signed at end "Your humble Servant." The Lenox copy is signed in ink below "Rip Van Dam." L.

[Three rows of printer's ornaments.]/To All to whom these Presents shall/come or may any Way concern;/*RIP VAN DAM* sendeth greeting./

Folio, 3 leaves.

Collation: No separate title-page. Text, pages 69–73; page [74] blank. Heading as above is at top of page 69. Signed at end "Rip Van Dam." L.

Advertised in the *New York Weekly Journal*, No. 125, dated March 29, 1736, as follows:

By Order of Rip Van Dam Esq, LAST Week was published His the said *Van Dam's* Protestation, Shewing the Steps he has taken in offering his Claim of Right to the Administration of this Government on the decease of Governour Cosby. To be sold by John Peter Zenger. Price 6d.

A LETTER/To one of the Members of the late General/Assembly,/

[Colophon:] Printed by *John Peter Zenger*, 1736./

Folio, 1 leaf.

Collation: No separate title-page. Text, 2 pages. The above heading is at the top of page [1], extending across the page. Text in double columns, signed at end "I am/Sir, Your very humble Servant,/— — —./" L

[Two rows of printer's ornaments.] Copy of a Letter from *Rip Van Dam/Esq;* to the several Members of that/General Assembly of *New-York*, that/stood adjourned to the last *Tuesday*/of *March*, 1736.

Folio, 2 leaves.

Collation: No separate title-page. Text, pages 1–4. Page 2 is wrongly numbered 11 and page 4 is wrongly numbered 13. L.

Advertised in the *New York Weekly Journal*, No. 130, dated May, 3, 1736, as follows:

"LAst week was published, by Order of *Rip Van Dam*, Esq, *a Coppy of his Letter, to the Several Members of the General Assembly that stood adjourned to the Last Tuesday of March 1736.* sent with a Copy of his Protestation.

Last Week was also published, by Order of the said Members, *The Declaration of a Majority of the Members of the said General Assembly met at the City Hall of* New-York, *on the* 29th *of* April, 1736, *with their Reasons, why they thought it not safe to act, upon the Foot of a late Adjournment by* George Clarke, Esq; &c.

Both the said Papers are printed together, and to be sold by the Printer hereof, *price 4d.*"

[Two rows of printer's ornaments.]/His Majesty's Royal/ COMMISSION/TO/*WILLIAM COSBY*, Esq,/For the Government of the Province of/NEW-YORK./[One row of printer's ornaments.]

[Colophon:] Printed by *John Peter Zenger*, Printer to the King's Most Excellent Majesty,/for the Province of *New-York*. M,DCC,XXXVI./

Folio, 4 leaves.

Collation: No separate title-page. Text, pages 1–8. Heading as above, filling the upper half of page 1. Above the colophon, printed in large type is found the legend:

"By Order of the Honourable Rip Van Dam, Esq;/Eldest Councillor, and Commander in Chief of/the Province of New-York./ L.

(1) [Three rows of printer's ornaments.] A brief Narrative of the Case and Try-/al of *John Peter Zenger*, Printer of the/*New-York weekly Journal.*/ [One row of ornaments.] As There was but one Printer in the Province of *New-York*, [etc.].

[Colophon:] *New-York*, Printed and sold by *John Peter Zenger*. MDCCXXXVI./

Folio, 20 leaves.

Collation: No separate title-page. Text, pages 1–[40], pages 15 to 40 being wrongly numbered 17 to 42. With 2 lines of errata at end, above colophon. L.

Advertised in the *New York Weekly Journal*, No. 98, dated September 23, 1735, as follows:

"There is now in the Press, and will be publish-/ed with all imaginable Speed, *A brief Narative of/the Case and Tryal of* John Peter Zenger, *Printer of/the* New-York weekly Journal.—Containing a/brief Account of the Proceed-

ings against him, and/of his Tryal, for Printing his Journals No. 13 &/23, both before and during his 9 Months Impri-/sonment on that Pretence./"

Also advertised in the *Journal*, No. 137, dated June 21, 1736, and in other numbers, as follows :

"*Just published,*/

A brief Narrative of the Case and Try-/al of *John Peter Zenger*, Printer of the/ *New-York weekly Journal.*/ To be sold by the Printer hereof./ April 12, 1736./"

City of New-York, Sept. 28, 1736./A WORD IN SEASON./ *Fellow Citizens.*/

[Colophon :] *Printed by* J. Peter Zenger./

Folio, 1 leaf.

Collation: Text, 2 pages. N.Y.S.L.; B.M.

OBSERVATIONS/On the REASONS given by Mr. *Ha-/milton's* Advisers, for his Detaining the/Seals of the Province of *New-Jersie*, after/the Demand made of them by *Lewis/Morris*, Esq; President of the Council/and Commander in Chief of the Pro-/vince of New-Jersie./In a LETTER to a FRIEND./

Folio, 6 leaves.

Collation: No separate title-page. Text, pages 1–11; blank, page [12]. N.J.S.L.

WAARSCHOUWING/Tegens Zeker Boekje, genaamt/ VADERLIK GESCHENK, &c./DOOR/JACOBTENCATE/ Waar in de Dweperyen en Vrygeestery van Ten / Cate en de befaamde Antoinette de Bourignon Dui-/delyk ontdekt worden, ten dienste der klein-/weetende misleide Zielen, en Bestieringe der/ Regtzinnigen./Opgesteltt door/De Predikanten van Groningen./ [Printer's Ornament]/voor heen te Groningen by Jurijen Spandaw, nu gedrukt./TE NEW-YORK door J. Peter Zenger.

MDCCXXXVI./

4to, 17 leaves.

Collation. Title, 1 page; "Uitgegeven volgens Kerten ordere," 1 page; text, pages 1–28; "Herders Kouwt Tusschen Vaarmond en Veederyk," pages 24–32. Title furnished by Mr. Wilberforce Eames.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick.

[Colophon :] NEW-YORK : Printed and Sold by *John Peter*

Zenger: By whom Subscriptions/for this Paper are taken at three Shillings *per* Quarter; and Advertisements at three/Shillings the first Week, and one Shilling every Week after:/

Fifty-two numbers. From No. 113, dated January 5, 1735, to No. 164, dated December 27, 1736. Each number consists of four pages.

1737

[Two rows of printer's ornaments.] A Journal of the Votes and Proceed-/ings of the General Assembly of His/Majesty's Colony of *New-York*, in/*America.*/

Folio, 54 leaves.

Collation: No separate title-page. Text, pages 1–107. Page 57 is omitted in the pagination and page 106 is repeated. Pages 57 to 105 are therefore wrongly numbered 58 to 106. Made up of 24 numbers, each a separate publication, as follows:

[No. 1]. Pages 1–5 (page 6 blank).
No. 2 " 7–8
No. 3 " 9–12
No. 4 " 13–22
No. 5 " 23–25 (page [26] blank).
No. 6 " 27–29 " [30] "
No. 7 " 31–33 " [34] "
No. 8 " 35–39 " [40] "
No. 9 " 41–43 " [44] "
No. 10 " 45–47 " [48] "
No. 11 " 49–52
No 12 " 53–55 " [56] "
No. 13 Pages 58–59 (page 57 omitted in the pagination.)
No. 14 " 60–62 (page 63 blank).
No. 15 " 64–68 " 69 "
No. 16 " 70–71
No 17 (wrongly numbered 16) Pages 72–77.
No. 18 Pages 78–81
No. 19 " 82–85
No. 20 " 86–89
No. 21 " 90–92 (page 93 blank).
No. 22 " 94–97
No. 23 " 98–101
No. 24 " 102–107 (with page 106 repeated).

Each number contains, at end, the following notice:

"By Virtue of an Order of the General Assembly I do appoint John Peter Zenger to print these Votes, and that no other Person do presume to Print the same," Signed "Lewis Morris, junr., Speaker."

The date of the first meeting reported in No. 1, is June 15, 1737, and of the last, reported in No. 24, Dec. 16, 1737. L., N.Y.H.S.

There is also in the Lenox volume an earlier issue of No. 2, a single leaf only, page 6 (verso blank), printed from the same types as the first page (7) of the later No. 2.

[One row of printer's ornaments.] The SPEECH of the Honourable/*George Clark*, Esq; Lieut. Governor and/Commander in Chief of the Province/of *New-York*, &c./

[Colophon:] *By Virtue of an Order of the General Assembly I do appoint* John Peter Zenger/*to print these Votes.*/Lewis Morris, *junr. Speaker.*/

Folio, 1 leaf.

Collation: Text, 2 pages. The Address of the General Assembly on page [1] is signed "Lewis Morris, Jun., Speaker" and is dated "Die Jovis, 16 Junii, 1737." The Speech is signed at end "George Clark." L.

[Two rows of printer's ornaments.] The SPEECH of the Honourable/*George Clarke*, Esq; Lieut. Governor/and Commander in Chief of the Pro-/vince of *New York*, &c./

[Colophon:] *By Virtue of an Order of the General Assembly I do appoint* John Peter Zenger/*to print this Speech, and that no other Person do presume to print the same.*/Lewis Morris, *junr. Speaker.*/

Folio, 1 leaf.

Collation: Text, pages (1) and 2. Heading as above, text in long lines signed at end "Geo. Clarke." and dated "September 2, 1737." L.

[One row of printer's ornaments.] To the Honourable GEORGE CLARKE,/Esq; Lieut. Governour and Commander in/Chief of the Province of *New-York*, &c./*The Humble Address of the General Assembly of the Colony of*/New-York,/

[Colophon:] *By Virtue of an Order of the General Assembly I do appoint* John Peter Zenger/*to print this Address, and that no other Person do presume to print the same.*/Lewis Morris, *junr. Speaker.*/

Folio, 3 leaves.

Collation: No separate title-page. Text, pages 1–6. In long lines beginning "May it please Your Honour," L.

A/DEFENCE/OF A/SERMON/Preached at Newark, June 2 1736./entituled, the Vanity of human Instituti-/ons in the Worship of God, against the/Exceptions of Mr. John Beach, in a/Letter to him./By JONATHAN DICKINSON, M.A./Minister of

the Gospel, at Elizabeth-/Town in New-Jersey./1 Joh. ii.19. They went from us; but/they were not of us: For if they had been of/us they would no Doubt have continued with us./Jam. 1.6. He that wavereth is like a Wave/of the Sea driven with the Wind and tossed./New-York, Printed by J. Peter Zenger./

12mo, printed in fours; 52 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages 3–104.

C. H. S.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] NEW-YORK: Printed and Sold by *John Peter Zenger*: By whom Subscriptions/for this Paper are taken at three Shillings *per* Quarter; and Advertisements at three/Shillings the first Week, and one Shilling every Week after./

Fifty-two numbers. From No. 165, dated January 10, 1736, to No. 216, dated December 26, 1737. Each number consists of four pages.

1738

(1)/[Two rows of printer's ornaments.] A Journal of the Votes and Proceed-/ings of the General Assembly of His Majesty's Colony of *New-York*,/in *America*./

Folio, 18 leaves.

Collation: No separate title-page. Text, pages 1–[36]. Page 23 repeated and pages 24 to 36 are wrongly numbered 23 to 35. Made up of seven numbers, each a separate publication, as follows:

No. 1	Pages	1–4
No. 2	"	5–8
No. 3	"	9–12
No. 4	"	13–15 (page 16 blank).
No. 5	"	17–18
No. 6	"	19–25 (page 23 being repeated in the pagination).
No. 7	"	26–35

Each number contains, generally at the end, the same notice or license as the Votes of 1737.

The date of the earliest session reported is April 4, 1738; and the latest is Sept. 20, 1738. N. Y. H. S.

KETEN/Der/Geddelyke Waarheden,/DIE/Men geloven en betrachten moet/OM/Salig te worden,/In haar natuurlyk verband

kortlyk/same gaschakelt; DOOR/GERARD. HAEGHOORT,/ predikant te Second-River./Door order van den Kerkenraed ingewoert in/de Gemmeente van Second-River./Te Nieuw-York,/ Gedrukt by J. Peter Zenger, 1738./

12mo, printed in fours; 22 leaves.

Collation: Title, 1 page; blank, 1 page; "Vooreeden" pages i–iv; "Op de Keten der Goddelyke Waarheden," page [5]; blank, page [vi]; text, pages 1–36. N. J. H. S.

Anno Regni/GEORGII/SECUNDI/REGIS/*Magnæ Britanniæ, Franciæ & Hiberniæ*,/UNDECIMO/[Acts and Laws Passed]/ At a General Assembly begun and holden/at *New-York*, the *Fifteenth* Day of *June*,/*Anno Domini*, 1737. In the *Eleventh*/*Year* of the Reign of our Sovereign Lord/GEORGE *the second*, by the Grace of/God, of *Great Britain*, *France* and *Ire-*/*land*, KING, Defender of the Faith, &c. [Two rows of printer's ornaments]/ NEW-YORK,/Printed by *John Peter Zenger*, MDCCXXXVIII./

Folio, 52 leaves.

Collation: Title, 1 page; blank, 1 page; text, pages 1–100; Table, 1 page; blank, 1 page. Page 28 is wrongly numbered 82. N. Y. H. S.

[Three rows of printer's ornaments.]/The VOTES and Proceedings of the/General Assembly of the Province/of *New-Jersey*, which began the 27*th*/of *October*, 1738./

Folio, 37 leaves.

Collation: No separate title-page. Text, pages 1–70, with the "Treasurer's Report," 4 pages, inserted between pages 63 and 64. Pages 33, 36, 37, 40, 60, 61, 62, 63 and 64 are wrongly numbered 32, 33, 36, 39, 55, 54, 58, 56 and 46. Made up of four numbers, each a separate publication, as follows:

No. [1]	Pages	1–10
No. 2	"	11–16
No. 3	"	17–56
No. 4	"	57–70

The "Treasurer's Report" four pages, unnumbered, is inserted between pages 63 and 64, in No. 4. Nos. [1], 2, and 3 have at end:

"*By Virtue of an Order of the House, I do appoint* John Peter Zenger *to print/these Votes. Joseph Bonnel, Speaker.*" L.

The SPEECH of His Excellency LEWIS MORRIS, Esq;/ Captain General and Governour in Chief in and over His Ma-/

jesty's Province of *Nova Cæsarea*, or *New-Jersey* and the Terri-/ tories thereon depending in *America*, and Vice Admiral in the/same, &c./

[Colophon:] Printed by *John Peter Zenger*, 1738.

Folio, 2 leaves.

Collation: No separate title-page. Text, pp. [1–4]. N. J. S. L.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign and Domestick.

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

Fifty-two numbers were probably printed. Of No. 217, which should have been dated January 2, no copy has been traced. The last number of the year was No. 263, dated December 25, 1738. Each number, so far as seen consists of four pages, except No. 259, dated November 27, 1738, which has six pages. There are numerous errors in numbers and dates.

1739

INTERCESSION Every Christian's Duty. A Sermon preach'd by the Rev. George Whitefield, A.B. of Pembrock College, Oxford. New-York, Reprinted by *John Peter Zenger*, and sold by Jacob Goelet. 1739.

Not seen. Advertised in the *New York Weekly Journal*, No. 317, dated January 7, 1739 [1740].

The Danger of Schisms and Contentions, with respect to the Ministry and Ordinance of the Gospel, represented in a Sermon. [By Jonathan Dickinson.] New York, 1739.

12mo.

Not seen. Title taken from Sabin, Vol. V, page 412, No. 20062. Probably printed by Zenger.

A SHORT/DIRECTION/FOR AN/Unregenerate Sinner,/Shewing how he may come to/CHRIST./Written in *Dutch* by a Lover of the/Truth, and Translated into *English*/by a Well-Wisher to all Men./NEW-YORK,/Reprinted by *John Peter Zenger*, 1739./

8vo, 12 leaves.

Collation: Title, page [1]; blank, page [2]; text, pages 3–24. H. S. P.

TO His Excellency LEWIS MORRIS,/Esq; Captain, General and Gover-/nour in Chief, in and over his Ma-/jesty's Province of *Nova-Cæsarea or/New-Jersey*, and Territories thereon/depending in *America*, and Vice Admiral in the same, *&c.*/The humble Address of His Majesty's Council of the Province/aforesaid./

[Colophon :] Printed by *John Peter Zenger*, *Jan.* 4. 1738–9,/

Folio, 2 leaves.

Collation: No separate title-page; text, 4 pages. N. J. S. L.

TO His Excellency LEWIS MORRIS, Esq; Captain, General and Gover-/nour in Chief, in and over His Ma-/jesty's Province of *Nova Cæsarea or/New-Jersey*, and Territories thereon/depending in *America*, and Vice Ad-/miral in the same, *&c.*/THE humble Address of the Representatives of the Province of/*Nova Cæsarea*, or *New-Jersey*, met in General Assembly./

[Colophon :] *By Virtue of an Order of the House, I do appoint* John Peter Zenger *to print/this Address* Joseph Bonnel, Spr./

Folio, 2 leaves.

Collation: No separate title-page; text, 3 pages; blank, 1 page. N. J. S. L.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick.

[Colophon :] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

Fifty-two numbers. From No. 264, dated January 1, 1738, to No. 315, dated December 24, 1739. Each number probably consists of four pages.

1740

THE/QUERISTS,/The Rev. Mr. *Whitefield's*/ANSWER,/The Rev. Mr *Garden's*/LETTERS, *&c.*/[Printer's ornament.]/*NEW YORK*, Printed by *J. P. Zenger*, 1740./

[Second title page :] THE / QUERISTS, / OR / An EXTRACT of sundry Passages/taken out of Mr *Whitefield's* prin-/ted Sermons, Journals and Let-/ters :/TOGETHER WITH/Some SCRUPLES propos'd in proper/*QUERIES* raised on each Remark./*By some Church-Members of the Presbyterian Persuasion.*/2

Tim i. 13. *Hold fast the Form of sound words.*—/Turpe est doctori cum culpa redarguit ipsum. / *NEW-YORK.* / Printed in the Year M,DCC,XL./

12mo, printed in fours; 80 leaves.

Collation: First title as above, page [i]; blank, page [ii]; second title as above, page [iii]; "To the Readers," pages iv–12; "The Address of several Persons of the Presbyterian Persuasion," pages 13–58; "A Letter from the Rev. Mr. Whitefield," pages 59–71; "Six Letters to the Reverend Mr. G. Whitefield," pages 72–151; "A Short Trip to Rome," pages 152–160. C. E. N.

VOORBIDDING een ieder Christen's Plicht, vertoont in een PREDICATIE door GEORGE WHITEFIELD, A.B. &c. Gedrukt en te koop by J. Peter Zenger, en Jacobus Goelet.

Not seen. Advertised in the *New York Weekly Journal*, No. 325, dated March 3, 1739.

Een Geestelyk Lied, Bequaam on Gesongen te werden in alle Godvruchtige Vergaderingen, ofte Particuleere 't Samenkomsten.

Not seen. Advertised in the *New York Weekly Journal*, No. 366, dated December 8, 1740.

A/Short History/OF A/Long Journey,/IT being some Account of the Life/of IOSIAH QUINBY, un-/till he came to enter into the/48*th* Year of his Age, with Re-/marks and Reflections upon his/own past Actions./ [Printer's ornament] / *NEW-YORK* Printed by *John Peter Zenger* 1740./

12mo, printed in fours; 32 leaves, the last blank.

Collation: Title, page [1]; blank, p. [2]; "To the Reader," pages 3–10; text, pages 11–61; blank, page 62. Signed at bottom of page 10, "Josiah Quinby," and at end, "Your Friend and Well Wisher, Josiah Quinby." L.

EEN KORTE/ HANDLEIDING / VOOR EEN / ONWEDERGEBOREN/SONDAAR, / OM TOT /CHRISTUS/ TE KOOMEN/Opgestelt door een Liefhebber der Waarheid./ [Printer's ornament.]/NIEUW-YORK, Gedrukt by *J. Peter Zenger*, 1740.

12mo, printed in fours; 12 leaves.

Collation: Title, page [1]; blank, pages [2]; text, pages 3–23; blank, page [24]. H. S. P.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

53 numbers. From No. 316, dated January 1, 1739, to No. 369, dated December 29, 1740. Each number probably consists of four pages.

1741

Nederduitsche Almanacke Voor 1742.

Not seen. Advertised in the *New York Weekly Journal*, No. 415, dated November 9, 1741. It is very doubtful that this was printed by Zenger.

Copy of a Letter from Capt. Peter Lawrence, to Andrew Archdickne, Esq; dated off Carthagena, March 20, 1741.

Not seen. Advertised in the *New York Weekly Journal*, No. 389, dated May 18, 1741. Doubtfully ascribed to Zenger's press.

A Spiritual Journey Temporaliz'd or an Alegorical Description of the Work of Grace in Man.

Not seen. Advertised in the *New York Weekly Journal*, No. 420, dated December 14, 1741, as follows:

"Just Publish'd and to be Sold by the Printer hereof, A Spiritual Journey Temporaliz'd, or an Alegorical Discription of the Work of Grace in Man.

A Verse may find him who a Sermon flies,
And turn delight into a Sacrifice.

HERBERT."

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

52 numbers. From No. 370, dated January 5, 1740, to No. 422, dated December 28, 1741. Each number probably consists of four pages

1742

Sermons by Alexander Garden.

12mo.

The only copy traced is imperfect, lacking the first leaf and one or more leaves at end. The collation of this copy is: Text (apparently of the Sermon "Take Heed How Ye Hear"), pages 3–32; title; "*Regeneration* and *the Tes-*

timony of the SPIRIT./Being the Substance of/Two SERMONS/Lately preached in the Parish Church of *St. Phi-/lip, Charles-Town*, in SOUTH CAROLINA./ *Occasioned by some erroneous Notions of certain Men who call/themselves Methodists.*/ By ALEXANDER GARDEN, *M. A.* Rector of the/said Parish./ [Printer's ornament]. *NEW-YORK.*/ Printed by *John Peter Zenger*, 1742." page [1]; blank, page [2]; text, pages 1–72, ending imperfectly with the catchword "God." L.C.P.

This book was advertised in the *New York Weekly Journal*, No. 451, dated July 19, 1742, as follows:

"*To be published this Week.*

TAKE HEED HOW YE HEAR, A SERMON on *Luke* viii. 18. And, *Regeneration*, and *the Testimony of the Spirit*. Both by ALEXANDER GARDEN, M.A., Rector of *St. Philips, Charles Town, S. Carolina.*

It was advertised also in the next number, No. 452, dated July 26, 1742, as follows:

"TAKE HEED HOW YE HEAR, A SERMON on *Luke* viii. 18. And *Regeneration*, and *the Testimony of the Spirit*. With a Preface, containing some Remarks on Mr. *Whitefield's* Journal. By *Alexander Garden*, M.A., Rector of *St. Philips, Charles Town, S. Carolina*. Printed By *John Peter Zenger*, 1742."

S*S Een leersaam ondersoek der Waarheid meest in betrekkinge to de selfs Verlocheninge, voorgestelt in een 'Tsaamenspraak tusschen Leerlievende en Waarheidlievende: Gedruckt by J: Peter Zenger, en te koop by Jacob Goelet na by de Oude Slip in New York.

Not seen. Advertised in the *New York Weekly Journal*, No. 452, dated July 26, 1742.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

52 numbers. From No. 432, dated January 4, 1741, to No. 475, dated December 27, 1742. Each number consists of four pages. There are several errors in numbering.

1743

Nederduitsche Almanack voor, 1743.

Not seen. Title taken from Mr. Hildeburn's notes. Advertised, also, in the *New York Weekly Journal*, No. 470, dated November 22, 1742, as follows:

"Just published and Sold by the Printer hereof.

Dutch & English ALMANACKS } for the year 1743–44."

It seems very doubtful, however, that these were *printed* by Zenger

JOHN PETER ZENGER

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

52 numbers. From No. 476, dated January 3, 1742, to No. 527, dated December 26, 1743. Each number consists of four pages.

1744

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

Probably 53 numbers. From No. 528, dated January 2, 1743, to No. 581, dated December 31, 1744. Each number probably consists of four pages.

1745

Advertisement,/*Perth-Amboy*, *September* 17, 1745./WHEREAS sundry of the Purchasors at/*Romopock*, have neglected to come to the Trustees/of the Council of Proprietors at *Perth-Amboy* [etc.].

4to, 1 leaf.

Collation: Text, 1 page; blank, 1 page. Signed at end, "Laur. Smyth, Clerk." N. Y. H. S.

Addressed to the delinquent purchasers of Romopock lands. Appears also in No. 628 of the *New York Weekly Journal* dated September 30, 1745.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick.

[Colophon:] New York, Printed by *John Peter Zenger*, where Advertisements are taken in./

Probably 52 numbers. The first issue seems to have been No. 582 for January 7, and the last No. 630 for December 30. Either there were errors made in numbering or three issues were omitted between No. 620, dated September 30 and No. 628, dated December 26.

CATHARINE ZENGER AND JOHN ZENGER, JR.

1746

A/Brief VINDICATION/OF/THE Purchassors / Against

the PROPRITORS,/IN/A Christian Manner./[Printer's ornament] NEW-YORK./Printed, by *J. Zenger*, jun. 1745-6/

12mo, printed in fours.

Collation: Title, page [i]; blank, page [ii]; "The Preface. To the Reader." pages iii–vi; "A Song of Praise to God," etc., pages vii–xi; text, pages 1–32; "Ejaculation I." [etc.] pages 33–37. Signed at bottom of page 32, "Griffin Jenkins." The catchword at page 33 is "Ejaculation V." (should be II.), and the catchwords on pages 34 and 35 are both "Ejaculation VI." That on page 34 should be III. and that on page 35 should be IV. E. D. C.

Nathan's Almanac for 1747.

Not seen. Title taken from Haven's list.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] NEW-YORK: Printed by the Widow Catharine Zenger, where Advertisements are taken in./

Probably 52 numbers. The first issue seems to have been No. 631, for January 6, and the last No. 680, for December 29. If no issues were omitted there must have been several errors in the numbering. Each number probably consists of four pages.

1747

An ANSWER to the Council of Proprietor's two/Publications; Sett forth at Perth-Amboy the 25th/of March 1746, and the 25th of March 1747. As/also some Observations on Mr. Nevil's Speech to the/House of Assembly, in Relation to a Petition presented/to the House of Assembly, met at Trentown in the/Province of New-Jersey, in May, 1746./

[Colophon:] NEW-YORK:/Printed and Sold by the Widow Catherine Zenger, at the/Printing-Office in Stone-Street, 1747,/

Folio, 7 leaves.

Collation: No separate title-page. Text, pages 1–13; page [14] blank. L.

Nathan's Almanac for 1748.

Not seen. Title taken from Haven's list.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] NEW-YORK: Printed by the Widow Cathrine

Zenger at the Printing-Office in Stone-Street,/where Advertisements are taken in, and all Persons may be supplied with this Paper./

Probably 52 numbers. The first issue seems to have been No. 681, for January 5, and the last No. 732 for December 28. Each number probably consists of four pages.

1748

AN/Almanack,/FOR/The Year of Christian Account,/1749,/ Being the first after LEAP-YEAR/*Wherein is Contained*,/The Lunations, Eclipses, and Judgment of the/Weather, Planets Motions, and Mutual Aspects and/Time of Sun and Moon's rising and setting, the rising/southing and setting of the Seven Stars, and several/ other remarkable Stars, length of Days, a Tide-Table/Fairs, Courts, Observable Days, &c./ Fitted to the Vertex of the City of *Perth Amboy*/in *New-Jersey*, but may without sensible Error serve/serve the adjacent Provinces from *Newfoundland*/to *South Carolina*./By JOHN NATHAN, Philomath/NEW-YORK/Printed and Sold by the *Widow Catharine Zenger*, at the/Printing Office in Stone Street./

Small 8vo.

Collation: Title and text, pages 1–24. E. D. C.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] NEW-YORK: Printed by the Widow Catharine Zenger at the Printing-Office in Stone-Street,/where Advertisements are taken in, and all Persons may be supplied with this Paper./

Probably 52 numbers. The first issue seems to have been No. 733, for January 4, and the last No. 784, for December 26. Each number probably consists of four pages.

1749

Wilhelm Christopher Berkenmyers/ Geheime unt offentliche ANSPRACHE/ samt einer SCHLUS-REDE, / AN / HEREN / *Johann Christopher Hartwick*,/MIT ETLICHEN/Zur ERLAUTERUNG, und zur ENTDECKUNG/des *Criptoherrn Huthianisme*, dienenden Anmer-/kungen nach der Vorschrift unsrer *Nieu-Yorksen* K.O. *p.* ii./*Cap.* 11. *art·* 6./Zum DRUCK klaar gemacht./ Da von die Schlus-Rede vorlaufen aus gegeben/ist das in *theerbosh*, gegebene offentliche/ Ergernis, am Tage des HERREN, *d.* 5./

Februarii, 1748–9. *Christ-vernunftig* beurthei-/len zu konnen./ [Printer's ornament.]/Gedruckt zu *Neiu-York*, by *Johann Zenger*, M DCCXLIX./

4to, printed in twos; 58 leaves.

Collation: Title, 1 page; blank, 1 page; text, pages 1–114, with the following errors in pagination: 69 is 65, 70 is 66, 91 is 29. At end is this notice: "Van Pagina 27 Litra H. is gedruckt by my/Henry De Foreest." H.U.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign, and Domestick./

[Colophon:] NEW-YORK, Printed by JOHN ZENGER, in Stone Street near Fort George:/where ADVERTISEMENTS are taken in at a moderate Rate./

Probably 52 numbers. The first issue was No. 785, dated January 2, 1749, and the last was probably No. 836 for December 26. Each number probably consists of four pages, except No. 786, dated January 9, and No. 798, dated April 3, which consist of six pages.

THE/New-York Weekly Journal./Containing the freshest Advices, Foreign and Domestick./

[Colophon:] NEW-YORK, Printed by JOHN ZENGER, in Stone Street near Fort George:/where ADVERTISEMENTS are taken in at a moderate Rate./

Probably 52 numbers. The first issue was No. 837, dated January 2, and the last was probably No. 1006, for December 31. The issues seem to have been correctly numbered up to 888, dated October 29. The issues for November 5, 12 and 19 have not been traced; that for November 26 is No. 1001. This error is continued.

1751

THE (Royal) WEEKLY/
New-York (Arms) Journal/
Containing the freshest Advices, Foreign and Domestick./

[Colophon:] NEW-YORK: Printed and Sold by John Zenger, at the PRINTING-OFFICE,/in Stone-Street, near Fort GEORGE, where Persons may be supp'lyd with this/Paper at 10s. a YEAR. And where Advertisements are taken in./

The last year of the *Journal*. Just how many issues were printed cannot now be traced. The first issue seems to have been No. 1007 for January 7, 1750. The latest issue now known is No. 1017 (misprinted 0117), dated March 18, 1750. Hildeburn says that John Zenger the younger died "some time before July, 1751, when his presses and type were sold by auction."

LITERAL REPRINT

OF THE

FIRST EDITION

OF THE

CASE AND TRIAL

A brief Narrative of the Caſe and Tryal of *John Peter Zenger*, Printer of the *New-York weekly Journal.*

AS There was but one Printer in the Province of *New-York*, that printed a publick News Paper, I was in Hopes, if I undertook to publiſh another, I might make it worth my while; and I ſoon found my Hopes were not groundleſs: My firſt Paper was printed, *Nov. 5th*, 1733. and I continued printing and publiſhing of them, I thought to the Satisfaction of every Body, till the *January* following: when the Chief Juſtice was pleaſed to animadvert upon the Doctrine of Libels, in a long Charge given in that Term to the Grand Jury, and afterwards on the third *Tueſday* of *October*, 1734. was again pleaſed to charge the Grand Jury in the following Words.

'*Gentlemen*; I ſhall conclude with reading a Paragraph 'or two out of the ſame Book, concerning Libels; they are 'arrived to that Height, that they call loudly for your 'Animadverſion; it is high Time to put a Stop to them; for 'at the rate Things are now carried on, when all Order and 'Government is endeavoured to be trampled on; Reflections 'are caſt upon Perſons of all Degrees, muſt not theſe 'Things end in Sedition, if not timely prevented? Lenity, 'you have ſeen will not avail, it becomes you then to en-'quire after the Offenders, that we may in a due Courſe of 'Law be enabled to puniſh them. If you, *Gentlemen*, do 'not interpoſe, conſider whether the ill Conſequences that

'may arise from any Disturbances of the publick Peace, may 'not in part, lye at your Door?

'*Hawkins*, in his Chapter of Libels, considers three 'Points, 1*st*. *What shall be said to be a Libel.* 2*dly*. *Who are* 'liable to be punished for it. 3*dly*. *In what Manner they are* 'to be punished. Under the 1*st*. *he says*, §. 7. *Nor can there* 'be any Doubt, but that a Writing which defames a private 'Person only, is as much a Libel as that which defames Per-'sons intrusted in a publick Capacity, in as much as it manifestly 'tends to create ill Blood, and to cause a Disturbance of the 'publick Peace; however it is certain, that it is a very high 'Aggravation of a Libel, that it tends to scandalize the Gov-'ernment, by reflecting on those who are entrusted with the 'Administration of publick Affairs, which does not only en-'danger the publick Peace, as all other Libels do, by stirring 'up the Parties, immediately concerned in it, to Acts of Re-'venge, but also has a direct Tendency to breed in the People 'a Dislike of their Governours, and incline them to Faction 'and Sedition, As to the 2*d*. Point he says. § 10 *It is cer-* 'tain, not only he who composes or procures another to compose 'it but also that he who publishes, or procures another to pub-'lish it, are in Danger of being punished for it; and it is said 'not to be material whether he who disperses a Libel, knew 'any Thing of the Contents or Effects of it or not; for nothing 'could be more easy than to publish the most virulent Papers 'with the greatest Security, if the concealing the Purport of 'them from an illiterate Publisher, would make him safe in 'the dispersing them: Also, it has been said, that if he who 'hath either read a Libel himself, or hath heard it read by an-'other, do afterwards maliciously read or report any Part 'of it in the Presence of others, or lend or shew it to another, 'he is guilty of an unlawful Publication of it. Also it hath 'been holden, that the Copying of a Libel shall be a conclusive 'Evidence of the Publication of it, unless the Party can prove, 'that he delivered it to a Magistrate to examine it, in which 'Case the Act subsequent *is said to explain the Intention* pre-'cedent. *But it seems to be the better Opinion, that he who*

'*firſt writes a Libel, dictated by another, is thereby guilty of* '*Making of it, and conſequently puniſhable for the bare Writ-* '*ing; for it was no Libel till it was reduced to Writing.*

'Theſe, *Gentlemen*, are ſome of the Offences which are to 'make Part of your Enquiries; and if any other ſhould ariſe 'in the Courſe of your Proceedings, in which you are at 'a Loſs, or conceive any Doubts, upon your Application 'here, We will aſſiſt and direct you.

The Grand Jury not indicting me as was expected, the Gentlemen of the Council proceeded to take my Journals into Conſideration, and ſent the following Meſſage to the general Aſſembly.

'*Die Jovis*, 3 *ho.* P. M. 17*th of* October, 1734.

'A Meſſage from the Council by *Philip Cortlandt*, in 'theſe Words, *to wit*,

'That Board having had ſeveral of *Zenger's New-York* '*weekly Journals*, laid before them, and other ſcurrilous 'Papers, tending to alienate the Affections of the People of 'this Province from His Majeſty's Government, to raiſe 'Seditions and Tumults among the People of this Province, 'and to fill their Minds with a Contempt of His Majeſty's 'Government: And conſidering the pernicious Conſe-'quences that may attend ſuch growing Evils, if not ſpeedi-'ly and effectually put a Stop to. And conceiving that the 'moſt likely Method to put a Stop to ſuch bold and ſeditious 'Practices, to maintain the Dignity of his Majeſty's Govern-'ment, and to preſerve the Peace thereof, would be by a 'Conferrence between a Committee of this Board, and a 'Committee of the Aſſembly; it is therefore ordered, That 'the Gentlemen of this Board, NOW ASSEMBLED, or 'any ſeven of them, be a Committee, to join a Committee 'of the Houſe of Repreſentatives, in order to confer to-'gether, and to examine and enquire into the ſaid Papers, 'and the Authors and Writers thereof.

'Which Meſſage being read.

'*Ordered*, That the Members of this Houſe, or any 'fourteen of them, do meet a Committee of the Council, at 'the Time and Place therein mentioned.

'*Die Veneris*, 9 *ho.* 18 *October*, 1734.

'Mr. *Garretſon* from the Committee of this Houſe re- 'ported, That they laſt Night met the Committee of the 'Council, on the ſubject Matter of their Meſſage of yeſter- 'day to this Houſe; and that after ſeveral Preliminaries be- 'tween the ſaid Committees, the Gentlemen of the Council 'reduced to Writing, what they requeſted of this Houſe, 'and delivered the ſame to the Chairman, who delivered it 'in at the Table, and being read, is in the Words following.

At a Committee of the Council held the 17*th* of *October*, 1734.

PRESENT.

Mr. *Clarke.*	Mr. *Livingſton.*	Mr. *Courtland.*
Mr. *Hariſon.*	Mr. *Kennedy.*	Mr. *Lane.*
Dr. *Colden.*	Mr. Chief Juſtice.	Mr. *Horſmanden.*

'*Gentlemen*;

'The Matters we requeſt your Concurrence in, are, 'That *Zenger's* Papers, No. 7. 47. 48. 49. which were read, 'and which we now deliver, be burnt by the Hands of the 'common Hangman, as containing in them many Things 'derogatory of the Dignity of His Majeſty's Government, 'reflecting upon the Legiſlature, upon the moſt conſiderable 'Perſons, in the moſt Diſtinguiſhed Stations in the Province, 'and tending to raiſe Seditions and Tumults among the 'People thereof.

'That you concur with us in the Addreſſing the Gover- 'nour, to iſſue His Proclamation, with a Promiſe of Reward 'for the Diſcovery of the Authors or Writers of theſe Sedi- 'tious Libels.

'That you concur with us in an Order for Proſecuting 'the Printer thereof.

'That you concur with us in an Order to the Magiſ-
'trates, to exert themſelves in the Execution of their Of-
'fices, in order to preſerve the publick Peace of the Pro-
'vince.

'*By Order of the Committee.*

Fred. Morris, Cl. Con.

'Mr. *Garretſon* delivered likewiſe to the Houſe the ſev-
'eral Papers referred to in the ſaid Requeſt.

'*Ordered*, That the ſaid Papers be lodg'd with the Clerk
'of this Houſe, and that the Conſideration thereof, and the
'ſaid Requeſt, be referred till *Tueſday* next.

'*Die Martis*, 9 *ho.* A. M. 22 *October*, 1734.

'The Houſe according to Order proceeded to take into
'Conſideration the Requeſt of a Committee of Council, de-
'livered to a Committee of this Houſe, on the 16*th* inſtant,
'as likewiſe of the ſeveral Papers therein referred to. And
'after ſeveral Debates upon the ſubject Matters, it was OR-
'DERED THAT THE SAID PAPERS AND RE-
'QUEST LYE ON THE TABLE.'

The Council finding the General Aſſembly would not do any Thing about it, they ſent the following Meſſage to the Houſe.

'*Die Sabbati*, 9 *ho.* A. M. 2 *November*, 1734.

'A Meſſage from the Council by Mr. *Livingſton*, de-
'ſiring this Houſe to return by him to that Board, the
'ſeveral ſeditious journals of *Zenger's* No. 7. 47. 48. 49.
'which were delivered by a Committee of that Board to a
'Committee of this Houſe, the 17*th* of *October* laſt, together
'with the Propoſals of the Committee of that Board, de-
'livered therewith to a Committee of this Houſe; and then
'withdrew.

On *Tueſday* the 5*th* of *November*, 1734. the *Quarter Seſſions* for the City of *New-York* began, when the Sheriff delivered to the Court AN ORDER, which was read in theſe Words.

'At a Council held at Fort *George*, in *New-York*, the 2*d* 'of *November*, 1734.

PRESENT,

His Excellency *William Cosby*, Capt. General and Governour in Chief, *&c.*

Mr. *Clark.*	Mr. *Livingston.*	Mr. *Cortland.*
Mr. *Harison.*	Mr. *Kennedy.*	Mr. *Lane.*
* Dr. *Colden.*	Mr. Chief Justice.	Mr. *Horsmanden.*

'*Whereas by an Order of this Board, of this Day, some of* 'John Peter Zenger's *Journals, entitled,* The New-York 'weekly Journal, containing the freshest Advices, foreign and 'domestick, No. 7. 47. 48. 49. *were ordered to be burnt by* '*the Hands of the common Hangman, or Whipper, near the Pil-* 'lory in this City, *on* Wednesday *the* 6th *Instant, between the* '*Hours of Eleven and Twelve in the Forenoon, as containing in* '*them many Things tending to Sedition and Faction, to bring* '*His Majesty's Government into Contempt, and to disturb the* '*Peace thereof, and containing in them likewise, not only Re-* '*flections upon His Excellency the Governour in particular, the* '*Legislature in general, but also upon the most considerable Per-* '*sons in the most distinguished Stations in this Province. It is* '*therefore ordered, That the Mayor, and Magistrates of this* '*City, do attend at the Burning of the several Papers or Jour-* '*nals aforesaid, Numbered as above mentioned.*

Fred. Morris, D. Cl. Con.

'To *Robert Lurting*, Esq; Mayor of the City of *New-* '*York*, and the Rest of the Magistrates for the said 'City and County.

Upon reading of which ORDER, the Court forbad the Entring thereof in their Books at that Time, and many of them declared, that if it should be entred, they would have their Protest entered against it.

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* N.B. Doctor Colden *was that day, at* Esopus, 90 *Miles from* New-York, *tho' mentioned as present in Council.*

On *Wedneſday* the *6th* of *November*, the Sherriff of *New-York* moved the Court of *Quarter Seſſions*, to comply with the ſaid Order, upon which one of the Aldermen offered a proteſt, which was read by the Clerk, and approved of by all the Aldermen, either expreſsly or by not objecting to it, and is as followeth.

'Whereas an ORDER has been ſerved on this Court, in theſe Words.

[*The Order as above incerted.*]

'And whereas this Court conceives, they are only to be 'commanded by the King's Mandatory Writs, authorized by 'Law, to which they conceive they have the Right of ſhew-'ing Cauſe why they don't obey them, if they believe them 'improper to be obey'd, or by ORDERS, which have 'ſome known Laws to authorize them; and whereas this 'Court conceives THIS ORDER to be no Mandatory 'Writt warranted by Law, nor knows of no Law that author-'izes the making the Order aforeſaid; ſo they think them-'ſelves under no Obligation to obey it: Which Obedience, 'they think, would be in them, an opening a Door for ar-'bitrary Commands, which, when once opened, they know 'not what Dangerous Conſequences may attend it. Wherefore 'this Court conceives it ſelf bound in Duty (for the Preſer-'vation of the Rights of this Corporation, and as much as 'they can, the Liberty of the Preſs and the People of the 'Province, ſince an Aſſembly of the Province, and ſeveral 'Grand Juries, have refuſed to meddle with the Papers, 'when applied to by the Council) *to proteſt againſt the* 'ORDER *aforeſaid, and to forbid all the Members of this* '*Corporation, to pay any Obedience to it*, until it be ſhewn to 'this Court, that the ſame is Authorized by ſome known 'Law, which they neither know nor believe that it is.'

Upon reading of which, it was required of the Honour-able *Francis Hariſon*, Recorder of this Corporation, and one of the Members of the Council, (preſent at making ſaid Order) to ſhew by what Law or Authority the ſaid ORDER

was made; upon which he ſpoke in Support of it, and cited the Caſe of Doctor *Sacheverel's* Sermon, which was by the Houſe of Lords ordered to be burnt by the Hands of the Hangman, and that the Mayor and Aldermen of *London* ſhould attend the doing of it, to which one of the Aldermen anſwered to this Purpoſe; that he conceived the Caſe was no ways parallel, becauſe Doctor *Sacheverel*, and his Sermon, were impeached by the Houſe of Commons of *England*, which is the Grand Jury of the Nation, and Repreſentative of the whole People of *England:* That this their Impeachment they proſecuted before the Houſe of Lords, the greateſt Court of Juſtice of *Britain*, and which beyond Memory of Man, has had Cognizance of Things of that Nature, that there *Sacheverel* had a fair Hearing in Defence of himſelf and of his Sermon. And after that fair Hearing, he and his Sermon were juſtly, fairly and legally condemened; that he had read the Caſe of Dr. *Sacheverel*, & thought he could charge his Memory, that the Judgment of the Houſe of Lords in that Caſe was, That the Mayor and Sheriffs of *London* and *Middleſex*, only ſhould attend the Burning of the Sermon, and not the Aldermen; and farther he remembred, that the Order upon that Judgment, was only directed to the Sheriffs of *London*, and not even to the Mayor, who did not attend the doing it; and farther ſaid, that would Mr. Recorder ſhew, that the Governour and Council had ſuch Authority as the Houſe of Lords, and that the Papers ordered to be burnt were in like manner legally proſecuted and condemned, there the Caſe of Doctor *Sacheverel* might be to the Purpoſe; but without ſhewing that, it rather proved that a Cenſure ought not to be pronounced, till a fair Tryal by a Competent and legal Authority were firſt had. Mr. Recorder was deſired to produce the Books from whence he cited his Authorities, that the Court might judge of them themſelves, and was told, that if he could produce ſufficient Authorities to warrant *this ORDER*, they would readily obey it, but otherwiſe not. Upon which he ſaid, he did not carry his Books about with him. To which it was anſwered,

he might ſend for them, or order a Conſtable to fetch them. Upon which he aroſe, and at the lower End of the Table he mentioned, That Biſhop *Burnet's* Paſtoral Letter, was ordered by the Houſe of Lords, to be burnt by the High Bailiff of *Weſtminſter;* upon which he abruptly went away, without waiting for an Anſwer or promiſing to bring his Books, and did not return ſitting the Court.

After Mr. Recorder's Departure, it was moved that the *Proteſt* ſhould be entered; to which it was anſwered, That the *Proteſt* could not be entered without entering alſo the ORDER, and it was not fit to take any notice of IT, and therefore it was propoſed that no Notice ſhould be taken in their Books of either, which was unanimouſly agreed to by the Court.

The Sherriff then moved, that the Court would direct their Whipper to perform the ſaid ORDER; to which it was anſwered, That as he was the Officer of the Corporation, they would give no ſuch *Order.* Soon after which the Court adjourned, and did not attend the Burning of the Papers. Afterwards about Noon, the Sheriff after reading the Numbers of the ſeveral Papers which were ordered to be burnt, delivered them unto the Hands of his own Negroe, and ordered him to put them into the Fire which he did, at which Mr. Recorder, *Jeremiah Dunbar*, Eſq; and ſeveral of the Officers of the Garriſon attended.

On the Lord's Day the 17*th of November*, 1734. I was taken and impriſoned by Virtue of a Warrant in theſe Words.

'At a Council held at Fort *George* in *New-York*, the 2*d* Day of *November*, 1734.

PRESENT,

His Excellency *William Coſby*, Captain General and Governour in Chief, *&c.*

Mr. *Clarke.*	Mr. *Kennedy.*	Mr. *Lane.*
Mr. *Hariſon.*	Chief Juſtice.	Mr. *Horſmanden.*
Mr. *Livingſton.*	Mr. *Cortlandt.*	

'It is ordered that the Sheriff for the City of *New-*
'*York*, do forthwith take and apprehend *John Peter Zenger*,
'for printing and publiſhing ſeveral Seditious Libels, diſ-
'perſed throughout his Journals or News Papers, entituled
'*The New-York Weekly Journal, containing the freſheſt Ad-*
'*vices, foreign and domeſtick;* as having in them many Things,
'tending to raiſe Factions and Tumults, among the People
'of this Province, inflaming their Minds with Contempt of
'His Majeſty's Government,and greatly diſturbing the Peace
'thereof, and upon his taking the ſaid *John Peter Zenger, to*
'*commit him to the Priſon or common Goal of the ſaid City and*
'*County*.

Fred. Morris, *D. Cl. Con.*

And being by Virtue of that Warrant ſo impriſoned in the Goal, I was for ſeveral Days denied the uſe of Pen, Ink and paper, and the Liberty of Speech with any Perſons. - - - - Upon my Commitment, ſome Friends ſoon got a *Habeas Corpus*, to bring me before the Chief Juſtice, in order to my Diſcharge, or being bailed; on the Return whereof, on *Wedneſday* the 20*th* of *November*, my Council delivered Exceptions to the Return, and the Chief Juſtice ordered them to be argued publickly at the City-Hall, on the *Saturday* following.

On *Saturday* the 23*d* of *November*, the ſaid Exceptions came to be argued, by *James Alexander* and *William Smith*, of Council for me, and by Mr. Attorney General and Mr. *Warrrel*, of Council againſt me, in Preſence of ſome Hundreds of the Inhabitants; where my Council (ſaving the Benefit of Exception to the illegality of the Warrant) inſiſted that I might be admitted to reaſonable Bail. And to ſhew that it was my Right to be ſo, they offered *Magna Charta*, *The Petition of Right*, 3 Car. *The* Habeas Corpus *Act of* 31 Car. 2. which directs the Sum in which Bail is to be taken, to be, '*according to the Quality of the Priſoner, and Nature*
'*of the Offence.*' Alſo 2*d Hawkins*, Cap. 15 §. 5. in theſe Words, '*But Juſtice muſt take Care, that under Pretence of*

'*demanding ſufficient Security, they do not make ſo exceſſive a* '*Demand, as in Effect amounts to a Denyal of Bail; for this is* '*lookt on as a great Grievance, and is complained of as ſuch,* '*by* 1 W. & M. Sefs. 2d. *by which it is declared,* That exceſ-' ſive Bail ought not to be required.' It was alſo ſhewn that the ſeven Biſhops, who in King *James* the II*d's* Time, were charged with the like Crime that I ſtood charged with, were admitted to Bail on their own Recognizances, the Arch-Biſhop in 200*l.* & each of the other ſix in a 100*l.* apiece only. Sundry other Authorities and Arguments were produced and inſiſted on by my Council, to prove my Right to be admitted to moderate Bail, and to ſuch Bail as was in my Power to give; and ſundry Parts of Hiſtory they produced, to ſhew how much the requiring exceſſive Bail had been reſented by Parliament. And in order to Enable the Court to judge what Surety was in my Power to Give, I made Affidavit, *That* (*my Debts paid*) *I was not worth Forty Pounds,* (*the Tools of my Trade and wearing Apparel excepted.*)

Some warm Expreſſions (to ſay no worſe of them) were dropt on this Occaſion ſufficiently known and reſented by the Auditory, which for my Part I deſire may be buried in Oblivion: Upon the whole it was *Ordered that I might be admitted to Bail, my ſelf in* 400.l. *with two Sureties, each in* 200l. *and that I ſhould be remanded till I Gave it.* And as this was Ten Times more, than was in my Power to counter-ſecure any Perſon in giving Bail for me, I conceived I could not aſk any to become my Bail on theſe Terms; and therefore I returned to Goal, where I lay until *Tueſday* the *28th of January,* 1734,5, being the laſt Day of that Term; and the Grand Jury having found nothing againſt me, I Expected to have been diſcharged from my Impriſonment: But my Hopes proved vain; for the Attorney General then charged me by *Information,* for Printing and publiſhing Parts, of my Journals No. 13. and 23. as being *falſe, ſcandalous, malicious and ſeditious.*

To this Information my Council appeared, and offered Exceptions, leaving a Blank for inſerting the Judges Com-

miſſions, which the Court were of opinion not to receive till thoſe Blanks were filled up. In the ſucceeding Vacation the Judges gave Copies of their Commiſſions; and on *Tueſday* the 15*th* of *April* laſt, the firſt Day of the ſucceeding Term, my Council offered theſe Exceptions; which were as follows.

The Attorney General, *v.* *John Peter Zenger.* } On Information for a Miſdemeanour.

'Exceptions humbly offered by *John Peter Zenger*, to the 'Honourable *James De Lancey*, Esq; to judge in this 'Cauſe.

'The Defendant comes and prays Hearing of the Com-'miſſion, by Virtue of which the Honourable *James De* 'Lancey, Eſq; claims the Power and Authority to judge in 'this Cauſe, and it is read to him in theſe Words;

'GEORGE *the ſecond, by the Groce of God, of* Great Brit-'ain, France *and* Ireland, *King, Defender of the Faith*, &c. '*To Our truſty and well beloved* James De Lancey, *Eſq; We* 'repoſing *ſpecial Truſt and Confidence in your Integrity, Abil-*'ity and Learning; have aſſigned, conſtituted and appointed, and 'We do by theſe Preſents aſſign conſtitute and appoint you the 'ſaid James De Lancey, *to be Chief Juſtice in and over Our* 'Province *of* New-York, *in* America, *in the Room of* Lewis 'Morris, *Eſq; Giving and by theſe Preſents granting unto you,* 'full Power and lawful Authority, *to hear try and determine* 'all Pleas whatſoever, civil, criminal and mixt, *according to the* 'Laws, Statutes and Cuſtoms *of Our Kingdom of* England, *and* 'the Laws and Uſages, *of Our ſaid Province of* New-York, 'not being repugnant thereto, and Executions *of all Judgments* 'of the ſaid Court to award, and to make ſuch Rules and Or-'ders in the ſaid Court, as may be found convenient and uſeful, 'and as near as may be, agreeable to the Rules and Orders of 'Our Courts of King's Bench, Common Pleas and Exchequer in 'England. *To have hold and enjoy the ſaid Office or Place*

'*of Chief Juſtice, in and over Our ſaid Province, with all and* '*ſingular the Rights, Privileges, Profits and Advantages, Sallar-* '*ies, Fees and Perquiſites unto the ſaid Place belonging, or in* '*any Ways appertaining, in as full and ample Manner as any* '*Perſon heretofore Chief Juſtice of Our ſaid Province hath* '*held and enjoyed, or of Right ought to have held and enjoyed* '*the ſame, To you the ſaid* James De Lancey, *Eſq; for and* 'DURING OUR WILL AND PLEASURE. *In Teſ-* '*timony whereof we have cauſed theſe Our Letters to be made* '*Patent, and the great Seal of Our Province of* New-York *to* '*be hereunto affixed. Witneſs Our truſty and well beloved* 'WILLIAM COSBY, *Eſq; Our Captain General and Gov-* '*ernour in Chief of Our Provinces of* New-York, New-Jersey '*and the Territories thereon depending in* America, *Vice-Ad-* '*miral of the ſame, and Colonel in Our Army, at Fort* George, '*in* New-York, *the Twenty-firſt day of* Auguſt, *in the ſeventh* '*Year of Our Reign*, Annoq; Domini, 1733.

'Which being read and heard, the ſaid *John Peter Zenger*, 'by Proteſtation not confeſſing nor ſubmitting to the Power 'of any other Perſon to Judge in this Cauſe, doth except to 'the Power of the Honourable *James De Lancey*, Eſq; 'aforeſaid to judge in this Cauſe, by Virtue of the Commiſ- 'ſion aforeſaid, for theſe Reaſons, viz.

'1*ſt.* For that the Authority of a Judge of the King's 'Bench, in that Part of *Great Britain* called *England*, by 'which the Cognizance of this Cauſe is claimed, is by the 'ſaid Commiſſion granted to the Honourable *James De* '*Lancey*, Eſq; aforeſaid, only *during Pleaſure;* whereas that 'Authority (by a Statute in that Caſe made and provided,) 'ought to be granted *during good Behaviour*.

'2*d.* For that by the ſaid Commiſſion, the Juriſdiction 'and Authority of a Juſtice of the Court of Common Pleas 'at *Weſtminſter* in that Part of *Great-Britain*, called *Eng-* '*land*, is granted to the ſaid *James De Lancey*, Eſq; which 'Juriſdiction and Authority, cannot be granted to, and ex- 'erciſed by, any one of the Juſtices of the King's Bench.

'3*d.* For that the Form of the ſaid Commiſſion, is not

'founded on nor warranted by the Common Law, nor any 'ſtatute of *England*, nor of *Great-Britain*, nor any Act of 'Aſſembly of this Colony.

"4*th*. For that it appears by the Commiſſion aforeſaid, 'that the ſame is granted under the Seal of this Colony, by 'His Excellency *William Coſby*, Eſq; Governour thereof; and 'it appears not, that the ſame was granted, neither was the 'ſame granted, by and with the Advice and Conſent of His 'Majeſty's Council of this Colony; without which Advice 'and Conſent, His Excellency could not grant the ſame.

'Wherefore, and for many other Defects in the ſaid 'Commiſſion, this Defendant humbly hopes, that the Hon-'ourable *James De Lancey* Eſq; will not take Cognizance of 'this Cauſe, by Virtue of the Commiſſion aforeſaid.

Was ſigned, { *James Alexander.* / *William Smith.* }

The Exceptions to the Commiſſion of the Honourable *Frederick Philipſe*, Eſq; were the ſame with the foregoing, including therein his Commiſſion, which is in theſe Words.

'GEORGE *the ſecond, by the Grace of God, of* Great 'Britain, France *and* Ireland, *King Defender of the Faith*, '&c. *To Our truſty and well beloved* Frederick Philipſe, *Eſq*; '*Greeting: Whereas it is Our Care, that Juſtice be duely ad-'miniſtered to Our Subjects within Our Province of* New-'York, *and Territories thereon depending in* America; *and* '*We repoſing especial Confidence, in your Integrity, Ability and* '*Learning, have aſſigned, conſtituted and appointed, and We* '*do by theſe Preſents aſſign, conſtitute and appoint you the ſaid* 'Frederick Philipſe, *to be ſecond Juſtice, of Our Supream* '*Court of Judicature of Our Province of* New-York, *in the* '*Room of* James De Lancey, *Eſq*; *Giving and granting unto* '*you the ſaid* Frederick Philipſe, *full Power and Authority*, '*with Our other Juſtices of Our ſaid Supream Court, to hear, try* '*and determine, all Pleas whatsoever, civil, criminal and mixt*, '*according to the Laws, Statutes and Cuſtoms of Our Kingdom* '*of* England, *and the Laws and Uſages of Our ſaid Province*

'*of* New-York, *not being repugnant thereto, and Executions of* '*all Judgments of the ſaid Court to award, and to act and do* '*all Things, which any of Our* Juſtices of either Bench, or 'Baron of the Exchequer, in Our ſaid Kingdom of *Eng-* '*land, may or ought to do; and alſo to aſſiſt, in the making ſuch* '*Rules and Orders in Our ſaid Court, as ſhall be for the Good* '*and Benefit of Our ſaid Province; and as near as conveniently* '*may be, to the Rules and Orders of Our ſaid Courts in Our* '*ſaid Kingdom of* England: *To have, hold and enjoy, the ſaid* '*Office or Place of ſecond Juſtice of our ſaid Province of* 'New-York, *together with all and ſingular the Rights, Priv-* '*ileges, Salaries, Fees, Perquiſites, Profits and Advantages* '*thereto, now or at any Time heretofore belonging, or in any* '*wiſe of Right appertaining; unto you the ſaid* Frederick Phil- 'ipſe, *for and* during Our Pleaſure. *In Teſtimony whereof,* '*We have cauſed theſe our Letters to be made Patent, and* '*the Great Seal of Our ſaid Province of* New-York *to be here-* '*unto affixed. Witneſs Our truſty and well beloved* WIL- 'LIAM COSBY, *Eſq; Our Captain General and Governour* '*in Chief, of Our Provinces of* New-York, New-Jersey, *and* '*Territories thereon depending in* America, *Vice Admiral of* '*the ſame, and Colonel in Our Army, &c, at* Fort George *in* 'New-York, *the Twenty-firſt Day of* Auguſt, *in the Seventh* '*Year of Our Reign,* Annoq; Domini, 1733.

Fred. Morris, D. Secry.

Tueſday, the 15*th* of *April*, 1735.

Mr. *Alexander* offered the above Exceptions to the Court, and prayed that they might be filed. Upon this the Chief Juſtice ſaid to Mr. *Alexander* and Mr. *Smith*, That they ought well to conſider the Conſequences of what they offered; to which both anſwered, That they had well conſidered what they offered, and all the Conſequences. And Mr. *Smith* added, that he was ſo well ſatisfied of *the Right of the Subject to take an Exception to the Commiſſion of a Judge, if he thought ſuch Commiſſion illegal*, - - - - that he durſt venture his Life upon *that Point*. As to *the Validity of the Excep-*

tions then offered, he ſaid he took that to be a *ſecond Point;* but was ready to argue them both, if their Honours were pleaſed to hear him. To which the Chief Juſtice replied, That he would conſider the Exceptions in the Morning; and ordered the Clerk to bring them to him.

Wedneſday the 16*th April*, 1735.

The Chief Juſtice delivered one of the Exceptions to the Clerk, and Juſtice *Philipſe* the other, upon which Mr. *Smith* aroſe and aſked the Judges, whether their Honours would hear him upon theſe two points.* 1*st. That the Subject has a Right to take ſuch Exceptions, if they judged the Commiſſions illegal.* 2*dly. That the Exceptions tendred were legal and valid.* To which the Chief Juſtice ſaid, that they would neither hear nor allow the Exceptions; *for* (ſaid he) *you thought to have gained a great Deal of Applauſe and Popularity by oppoſing this Court, as you did the Court of Exchequer; but you have brought it to that Point, That either*, We muſt go from the Bench, or you from the Barr: *Therefore We exclude you and Mr.* Alexander *from the Barr*; and delivered a Paper to the Clerk, and ordered it be entered, which the Clerk entered accordingly, and returned the Paper to the Chief Juſtice; after which the Chief Juſtice ordered the Clerk to read publickly what he had written; an atteſted Copy whereof follows.

At a Supream Court of Judicature held for the Province of *New-York*, at the City Hall of the City of *New-York*, on *Wedneſday*, the 16*th* Day of *April*, 1735.

PRESENT,

The Honourable *James De Lancey*, Eſq: Chief Juſtice.
The Honourable *Frederick Philipſe*, Eſq; Second Juſtice.

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* *This firſt point is largely treated on, in the Arguments of* Van Dam's *Council, in ſupport of their Plea to the Juriſdiction of the Supream Court, printed here above a Year before that, from* Pag. 14 *to* 35, *to which no Anſwer has as yet appeared; which Argument, contains alſo ſome Part of the Arguments neceſſary to ſupport the* 2*d. Point.*

'James Alexander, *Esq*, *and* William Smith, *Attornies of* 'this Court, *having presumed* (notwithstanding they were 'forewarned by the Court of their DISPLEASURE if 'they should do it) *to sign, and having actually signed, and* 'put into Court, *Exceptions, in the Name of* John Peter Zen-'ger; *thereby denying the Legality of the Judges their Com-'missions; tho' in the usual Form*, and the being of this Su-'preme Court. *It is therefore ordered, that for the said* 'Contempt, *the said* James Alexander, *and* William Smith, 'be excluded from any farther Practice in this Court, *and that* 'their Names be struck out of the Roll of Attornies of this 'Court.

per. Cur'. James Lyne, *Cl.*

After the Order of the Court was read, Mr. *Alexander* asked whether it was the Order of Mr. Justice *Philipse* as well as of the Chief Justice? To which both answered, that it was their Order; upon which Mr. *Alexander* added, That it was proper to ask that Question, *That they might know how to have their Relief*: He farther observed to the Court, upon reading of the Order, That they were mistaken in their Wording of it, because the Exceptions were *only to their Commissions*, and *not to the being of the Court*, as is therein alledged; and prayed that the Order might be altered accordingly. The Chief Justice said, they conceived the Exceptions were against the Being of the Court. Both Mr. *Alexander* and Mr. *Smith* denyed that they were, and prayed the Chief Justice to point to the Place that contained such Exception; and further added; That the Court might well exist, tho' the Commissions of all the Judges were void; which the Chief Justice confessed to be true: And therefore they prayed again that the Order in that Point might be altered; but it was denied.

Then Mr. *Alexander* desired to know, whether they *over ruled* or *rejected* the Exceptions; the Chief Justice said, he did not understand the Difference; to which said *Alexander* replied, that if he *rejected* the Exceptions, then they could

not appear upon the Proceedings, and in that Cafe the Defendant was entitled to have them made Part of the Proceedings, by Bill of Exceptions: But if they *over ruled* them, then by ſo doing, they only declared them not ſufficient, to hinder them from proceeding by virtue of thoſe Commiſſions, and the Exceptions would remain as Records of the Court, and ought to be entered on the Record of the Cauſe as Part of the Proceedings. The Chief Juſtice ſaid, they muſt remain upon the File, to warrant what we have done; as to being Part of the Record of the Proceedings in that Cauſe, he ſaid, you may ſpeak to that Point to morrow.

Fryday, April 18th, 1735.

Mr. *Alexander* ſignified to the Court, That on *Wedneſday* laſt their Honours had ſaid, That the Council for *Zenger* might ſpeak to the Point, concerning the *Rejecting* or *Over ruling* of *Zenger's* Exceptions on the Morrow: To which the Chief Juſtice anſwered. That he ſaid, *You may get ſome Perſon to ſpeak to that Point on the Morrow, not meaning that the ſaid* Alexander *ſhould ſpeak to it, that being contrary to the Order*, Both Mr. *Alexander* and Mr. *Smith* ſaid, they underſtood it otherwiſe.

They both alſo mentioned, that it was a Doubt, whether by the Words of the Order they were debarred of their Practice as Council, as well as Attornies, whereas they practiſed in both Capacities? To which the Chief Juſtice anſwered, That the Order was plain, *That* James Alexander, *Eſq; and* William Smith, *were debarred and excluded from their whole Practice at this Barr, and that the Order was intended to barr their acting both as Council and as Attornies, and that it could not be conſtrued otherwiſe*, And it being aſked Mr. *Philipſe*, Whether he underſtood the Order ſo; He anſwered, that he did.

Upon this Excluſion of my Council I petitioned the Court to order Council for my Defence, who thereon appointed *John Chambers*, Eſq; who pleaded *Not Guilty* for me

to the Information. But as to the Point. *Whether my Exceptions ſhould be part of the Record as was moved by my former Council*, Mr. *Chambers* thought not proper to ſpeak to it; Mr. *Chambers* alſo moved, that a certain Day in the next Term, might be appointed for my Tryal, and for *a Struck Jury;* whereupon my Tryal was ordered to be on *Munday*, the 4*th* of *Auguſt*, and the Court would conſider till the firſt Day of next Term, whether I ſhould have a Struck Jury or not, and ordered that the Sheriff ſhould in the mean Time, at my Charge, return the Freeholders Book.

At a Supream Court of Judicature held for the Province of *New-York*, before The Honourable *James De Lancey*, Eſq; Chief Juſtice of the ſaid Province; and The Honourable *Frederick Philipſe*, Eſq; ſecond Juſtice of the ſaid Province.

On *Tuesday* the 29*th* of *July*, 1735. The Court opened, and *on Motion of Mr.* Chambers *for a Struck Jury, pursuant to the Rule of the preceding Term, the Court were of Opinion that I was entitled to have a Struck Jury;* and that Evening at five of the Clock, ſome of my Friends attended the Clerk, for ſtriking the Jury; when to their Surprize, the Clerk inſtead of producing the Freeholders Book, to Strike the Jury of it in their Preſence as usual, he produced a Liſt of 48 Perſons, who, he ſaid he had taken out of the Freeholders Book; my Friends told him, that a great Number of theſe Perſons were not Freeholders, that others were Perſons holding Commiſſions and Offices at the Governour's Pleaſure, that others were of the late diſplaced Magiſtrates of this City, who muſt be ſuppoſed to have Reſentment againſt me, for what I had printed concerning them; that others were the Governour's Baker, Taylor Shoemaker, Candlemaker, Joiner, *&c.* that as to the few indifferent Men that were upon that Liſt, they had Reaſon to believe (as they had heard) that Mr. Attorney had a Liſt of them, to ſtrike them out; and therefore requeſted that he would either bring the Freeholders Book, and chuse out of it 48

unexceptionable Men in their Preſence, as uſual or elſe, that he would hear their Objections particularly to the Liſt he offered, and that he would put impartial Men in the Place of thoſe againſt whom they could ſhew juſt Objections. Notwithſtanding this, the Clerk refuſed to ſtrike the Jury out of the Freeholders Book, and refuſed to hear any Objections to the Perſons on his Liſt; but told my Friends, if any Objections they had to any Perſons, they might ſtrike those Perſons out; to which they anſwered, there would not remain a Jury, if they ſtruck out all the exceptionable Men, and according to the Cuſtom, they had only a Right to ſtrike out 12.

But finding no Arguments could prevail with the Clerk to hear their Objections to his Liſt, nor to ſtrike the Jury as uſual, Mr. *Chambers* told him, he muſt apply to the Court, which the next Morning he did, and the Court upon his Motion *Ordered, That the* 48 *ſhould be ſtruck out of the Freeholders Book as uſual, in the preſence of the Parties, and that the Clerk ſhould hear Objections to Perſons propoſed to be of the* 48, *and allow of ſuch Exceptions as were juſt.* In Purſuance of that Order, a Jury was that Evening ſtruck, to the Satisfaction of both Parties, who my Friends and Council inſiſted on no Objections but *want of Freeholders;* and tho' they did not inſiſt, that Mr. Attorney General (who was aſſiſted by Mr. *Blagge*,) ſhould ſhew any particular Cauſe, againſt any Perſons he diſliked, but acquieſced that *any perſon he deſliked* ſhould be out of the 48.

Before *James De Lancey*, Eſq; Chief Juſtice of the Province of *New-York*, and *Frederick Philipſe*, ſecond Judge, came on my Tryal, on the fourth Day of *Auguſt*, 1735. upon an Information for printing and publiſhing two News Papers, which were called Libels againſt our Governour and his Adminiſtration.

The Defendant *John Peter Zenger* being called appeared.

And the Sherrif returned his *Venire* for the Tryal of the ſaid Cauſe.

Mr. *Chambers, of Council for the Defendant.* I humbly move Your Honours, that we may have Juſtice done by the Sherrif, and that he may return the Names of the Jurors in the ſame Order as they were ſtruck.

Chief Juſtice. *How is that? Are they not ſo returned?*

Mr. *Ch.* No they are not: For ſome of the Names that were laſt ſet down in the Pannel, are now placed firſt.

Ch. J. *Make out that, and you ſhall be righted.*

Mr. *Ch.* I have the Copy of the Pannel in my Hand, as the Jurors were ſtruck, and if the Clerk will produce the Original ſigned by Mr. Attorney and my ſelf, Your Honour will ſee our Complaint is juſt.

Ch. J. *Clerk, is it ſo? Look upon that Copy; is it a true Copy of the Pannel as it was ſtruck?*

Clerk. Yes, I believe it is.

Ch. J. *How came the Names of the Jurors to be miſplaced in the Pannel annexed to the* Venire?

Sheriff. I have returned the Jurors in the ſame Order in which the Clerk gave them to me.

Ch. J. *Let the Names of the Jurors be ranged in the Order they were ſtruck, agreeable to the Copy here in Court.*

Which was done accordingly. And the Jury, whoſe Names were as follows, were called and ſworn.

Harmanus Rutgers,	*Samuel Weaver,*	*Benjamin Hildreth,*
Stanly Holmes,	*Andries Marſchalk,*	*Abraham Keteltas,*
Edward Man,	*Egbert van Borſom,*	*John Goelet,*
John Bell,	*Thomas Hunt, Form.*	*Hercules Wendover.*

Mr. Attorney General opened the Information, which was as follows.

Mr. *Attorney.* May it pleaſe Your Honours, and you Gentlemen of the Jury; the Information now before the Court, and to which the Defendant *Zenger* has pleaded *Not Guilty*, is an Information for printing and publiſhing *a falſe, ſcandalous, and ſeditious Libel*, in which his Excellency the Governour of this Province, who is the King's immediate

Repreſentative here, is greatly and unjuſtly ſcandalized, as a Perſon that has no Regard to Law nor Juſtice; with much more, as will appear upon reading the Information. This of Libelling is what has always been diſcouraged as a Thing that tends to create Differences among Men, ill Blood among the People, and oftentimes great Bloodſhed between the Party Libelling and the Party Libelled. There can be no Doubt but you Gentlemen of the Jury will have the ſame ill opinion of ſuch practices, as the judges have always ſhewn upon ſuch Occaſions: But I ſhall ſay no more at this Time, untill you hear the Information, which is as follows.

'*New-York*, Supream Court.
'of the Term of *January*, in the Eighth Year of the
'Reign of our Sovereign Lord King GEORGE the
'ſecond, *&c.*

'*New-York*, *ſs.* 'BE it remembered, That *Richard Bradly*, 'Eſq: Attorney General of Our Sove-'reign Lord the King, for the Province of *New-York*, who for 'Our ſaid Lord the King in this Part proſecutes, in his own 'proper Perſon comes here into the Court of our ſaid Lord 'the King, and for our ſaid Lord the King gives the Court 'here to underſtand and be informed, That *John Peter Zen-'ger*, late of the City of *New-York*, Printer, (being a ſedi-'tious Perſon; and a frequent Printer and Publiſher of falſe 'News and ſeditious Libels, and wickedly and maliciouſly 'deviſing the Government of Our ſaid Lord the King of this 'His Majeſty's Province of *New-York*, under the Admin-'iſtration of His Excellency *William Coſby*, Eſq; Captain 'General and Governour, in Chief of the ſaid Province, to 'traduce, ſcandalize and vilify, and His Excellency the ſaid 'Governour, and the Miniſters and Officers of Our ſaid 'Lord, the King of and for the ſaid Province to bring into 'Suſpicion and the ill Opinion of the Subjects of Our ſaid 'Lord the King reſiding within the Province) the Twenty 'eighth Day of *January*, in the ſeventh Year of the Reign

'of Our Sovereign Lord *George* the ſecond, by the Grace of 'God of *Great-Britain*, *France* and *Ireland*, King Defender 'of the Faith, *&c.* at the City of *New-York*, *did falſly*, *fedi-* '*tiouſly and ſcandalouſly* print and publiſh, and cauſe to be 'printed and publiſhed, a certain *falſe*, *malicious*, *ſeditious* '*ſcandalous* Libel, entitled *The New-York Weekly Journal*, '*containing the freſheſt Advices*, *foreign and domeſtick*; in which 'Libel (of and concerning His excellency the ſaid Govern- 'our, and the Miniſters and Officers of Our ſaid Lord the 'king, of and for the ſaid Province) among other Things 'therein contained are theſe Words; "*Your Appearance in* "*Print at laſt*, gives a Pleaſure to many, tho' moſt wiſh "you had come fairly into the open Field, and not ap- "peared behind *Retrenchments* made of the ſuppoſed Laws "againſt Libelling, and of what other Men have ſaid and "done before; theſe *Retrenchments*, Gentlemen, may ſoon "be ſhewn to you and all Men to be weak, and to have "neither Law nor Reaſon for their Foundation, ſo cannot "long ſtand you in ſtead: Therefore, you had much better "as yet leave them, and come to what *the People of this City* "*and Province* (the City and Province of *New-York* mean- "ing) think are the Points in Queſtion (*to witt*) They (the "People of the Ctiy and Province of *New-York* meaning) "*think as Matters now ſtand*, *that their* LIBERTIES *and* "PROPERTIES *are precarious*, *and that* SLAVERY *is like* "*to be intailed on them and their Poſterity*, *if ſome paſt* "*Things be not amended*, *and this they collect from many paſt* "*Proceedings*.' (Meaning many of the paſt Proceedings of 'of His Excellency the ſaid Governour, and of the Miniſ- 'ters and Officers of our ſaid Lord the King, of and for the 'ſaid Province.) And ſaid the Attorney General of Our 'ſaid Lord the King, for Our ſaid Lord the King, like- 'wiſe gives the Court here to underſtand and be informed, 'that the ſaid *John Peter Zenger* afterwards (*to wit*) the 'eighth Day of *April*, in the ſeventh Year of the Reign of 'Our ſaid Lord the King, at the City of *New York* afore- 'ſaid, did *falſly*, *ſeditiouſly and ſcandalouſly* print and publiſh,

'and cauſe to be printed and publiſhed, another *falſe mali-*
'*cious ſeditious and ſcandalous* Libel, entituled, *the New-York*
'*Weekly Journal, containing the freſheſt Advices, foreign and*
'*domeſtic.* In which Libel, (of and concerning the Govern-
'ment of the ſaid Province of *New-York*, and of and con-
'cerning His Excellency the ſaid Governour, and the Min-
'iſters and Officers of Our ſaid Lord the King, of and for
'the ſaid Province) among other Things therein contained,
'are theſe Words "*One of our Neighbours* (one of the In-
"habitants of *New-Jerſey* meaning) *being in Company, ob-*
"*ſerving the Strangers* (ſome of the Inhabitants of *New-*
"*York* meaning) *full of Complaints, endeavoured to perſwade*
"*them to remove into* Jerſey; *to which it was replied, that*
"*would be leaping out of the Frying Pan into the Fire; for,*
"*ſays he, we both are under the ſame Governour* (His Ex-
"cellency the ſaid Governour meaning) *and your Aſſembly*
"*have ſhewn with a Witneſs what is to be expected from them;*
"*one that was then moving to* Penſilvania, (meaning one
"that was then removing from *New-York*, with intent to
"reſide af *Penſilvania*) *to which Place it is reported ſeveral*
"*conſiderable Men are removing* (from *New-York* meaning)
"*expreſſed in Terms very moving, much Concern for the Cir-*
"*cumſtances of* New-York (the bad Circumſtances of the
"Province and People of *New-York* meaning) *ſeemed to*
"*think them very much owing to the Influence that ſome Men*
"(whom he called *Tools*) *had in the Adminiſtration* (meaning
"the Adminiſtration of Government of the ſaid Province
"of *New-York*) *ſaid he was now going from them, and was*
"*not to be hurt by any Meaſures they ſhould take, but could*
"*not help having ſome Concern for the Welfare of his Coun-*
"*try-Men, and ſhould be glad to hear that the Aſſembly* (mean-
"ing the General Aſſembly of the Province of *New-York*)
"*would exert themſelves as became them, by ſhewing that they*
"*have the Intereſt of their Country more at Heart, than the*
"*Gratification of any private View of any of their Members,*
"*or being at all affected, by the Smiles or Frowns of a Gov-*
"*ernour,* (His Excellency the ſaid Governour meaning)

" *both which ought equally to be deſpiſed, when the Intereſt of* " *their Country is at ſtake. You ſays he, complain of the Law-* " *yers, but I think the Law it ſelf is at an End*, WE (the " People of the Province of *New-York* meaning) SEE " MENS DEEDS DESTROYED, JUDGES ARBI- " TRARILY DISPLACED, NEW COURTS ERECT- " ED WITHOUT CONSENT OF THE LEGISLA- " TURE (within the Province of *New-York* meaning) BY " WHICH IT SEEMS TO ME, TRIALS BY JU- " RIES ARE TAKEN AWAY WHEN A GOVERN- " OUR PLEASES (His Excellency the ſaid Governour " meaning) MEN OF KNOWN ESTATES DENYED " THEIR VOTES, CONTRARY TO THE RE- " CEIVED PRACTICE, THE BEST EXPOSITOR " OF ANY LAW: *Who is then in that Province* (meaning " the Province of *New-York*,) *that call* (can call meaning) " *any Thing his own, or enjoy any Libery* (Liberty meaning) " *longer than thoſe in the Adminiſtration* (meaning the Ad- " miniſtration of Government of the ſaid Province of *New-* " *York*) *will condeſcend to let them do it, for which Reaſon I* " *have left it*, (the Province of *New-York* meaning) *as I be-* " *lieve more will.*' To the great Diſturbance of the Peace ' of the ſaid Province of *New-York*, to the Great Scandal ' of Our ſaid Lord the King, of His Exceellency the ſaid ' Governour, and of all others concerned in the Adminiſtra- ' tion of the Government of the ſaid Province, and againſt ' the Peace of Our Sovereign Lord the King His Crown ' and Dignity, *&c.* Whereupon the ſaid Attorney General ' of Our ſaid Lord the King, for Our ſaid Lord the King, ' prays the Adviſement of the Court here, in the Premiſes, ' and the due Proceſs of the Law, againſt him the ſaid *John* ' *Peter Zenger*, in this Part to be done, to anſwer to Our ' ſaid Lord the King of and in the Premiſes, *&c.*

' *R. Bradley*, Attorney General.

To this Information the Defendant has pleaded *Not Guilty*, and we are ready to prove it.

Mr. Chambers *has not been pleaſed to favour me with his Notes, ſo I cannot, for Fear of doing him Injuſtice, pretend to ſet down his Argument; But here Mr.* Chambers *ſet forth very clearly the Nature of a Libel, the great Allowances that ought to be made for what Men ſpeak or write, That in all Libels there muſt be ſome particular Perſons ſo clearly pointed out, that no Doubt muſt remain about who is meant; That he was in hopes* Mr. Attorney *would fail in his Proof, as to this Point; and therefore deſired that he would go on to examine his Witneſſes.*

Then Mr. *Hamilton*, who at the Requeſt of ſome of my Friends, was ſo kind as to come from *Philadelphia* to aſſiſt me on the Tryal, ſpoke.

Mr. *Hamilton.* May it pleaſe your Honour; I am concerned in this Cauſe on the Part of Mr. *Zenger* the Defendant. The Information againſt my Client was ſent me, a few Days before I left Home, with ſome Inſtructions to let me know how far I might rely upon the Truth of thoſe Parts of the Papers ſet forth in the Information, and which are ſaid to be libellous. And tho' I am perfectly of the Opinion with the Gentleman who has juſt now ſpoke, on the ſame Side with me, as to the common Courſe of Proceedings, I mean in putting Mr. Attorney upon proving, that my Client printed and publiſhed thoſe Papers mentioned in the Information; yet I cannot think it proper for me (without doing Violence to my own Principles) to deny the Publication of a Complaint, which I think is the Right of every free-born Subject to make, when the Matters ſo publiſhed can be ſupported with Truth; and therefore I'll ſave Mr. Attorney the Trouble of Examining his Witneſſes to that Point; and I do (for my Client) confeſs, that he both printed and publiſhed the two News Papers ſet forth in the Information, and I hope in ſo doing he has committed no Crime.

Mr. Attorney. Then if Your Honour pleaſes, ſince Mr. *Hamilton* has confeſſed the Fact, I think our Witneſſes may be diſcharged; we have no further Occaſion for them.

Mr. Hamilton. If you brought them here, only to prove the Printing and Publiſhing of theſe News Papers, we have acknowledged that, and ſhall abide by it.

Here my Journeyman and two Sons (with ſeveral others ſubpœna'd by Mr. Attorney, to give Evidence againſt me) were diſcharged, and there was Silence in the Court for ſome Time.

Mr. Chief juſtice. *Well Mr. Attorney, will you proceed?*

Mr. Attorney. Indeed Sir, as Mr. *Hamilton* has confeſſed the Printing and Publiſhing theſe Libels, I think the Jury muſt find a Verdict for the King; for ſuppoſing they were true, the Law ſays that they are not the leſs libellous for that; nay indeed the Law ſays, their being true is an Aggravation of the Crime.

Mr. *Hamilton.* Not ſo neither, Mr. Attorney, there are two Words to that Bargain. I hope it is not our bare Printing and Publiſhing a Paper, that will make it a Libel: You will have ſomething more to do, before you make my Client a Libeller; for the Words themſelves muſt be libellous, that is, *falſe, ſcandalous, and ſeditious* or elſe we are not guilty.

As Mr. Attorney has not been pleaſed to favour us with his Argument, which he read, or with the Notes of it, we cannot take upon us to ſet down his Words, but only to ſhew the Book Caſes he cited, and the general Scope of his Argument, which he drew from thoſe Authorities. He obſerved upon the Excellency, as well as Uſe of Government, and the great Regard and Reverence, which had been conſtantly paid to it, both under the Law and Goſpel. That by Government we were protected in our Lives, Religion and Properties; and that for theſe Reaſons, great Care had always been taken to prevent every Thing that might tend to ſcandalize Magiſtrates, and others concerned in the Adminiſtration of the Government, eſpecially the ſupream Magiſtrate. And that there were many

Inſtances of very ſevere Judgments, and of Puniſhments inflicted upon ſuch, as had attempted to bring the Government into Contempt; by publiſhing falſe and ſcurrilous Libels againſt it, or by ſpeaking evil and ſcandalous Words of Men in Authority; to the great Diſturbance of the publick Peace. And to ſupport this, he cited 5 Coke 121. (ſuppoſe it ſhould be 125.) Wood's Inſtit. 430. 2 Lilly 168. 1 Hawkins 73. 11. 6. *From theſe Books he inſiſted, that a Libel was a malicious Defamation of any Perſon, expreſſed either in Printing or Writing, Signs or Pictures, to aſperſe the Reputation of one that is alive, or the Memory of one that is dead; if he is a private Man, the Libeller deſerves a ſevere Puniſhment, but if it is againſt a Magiſtrate or other publick Perſon, it is a greater Offence; for this concerns not only the Breach of the Peace, but the Scandal of the Government; for what greater Scandal of Government can there be, than to have corrupt or wicked Magiſtrates to be appointed by the King, to govern his Subjects under him? And a greater Imputation to the State cannot be, than to ſuffer ſuch corrupt Men to ſit in the ſacred Seat of Juſtice, or to have any Medling in, or concerning the Adminiſtration of Juſtice: And from the ſame Books Mr. Attorney inſiſted, that whether the Perſon deſamed is a private Man or a Magiſtrate, whether living or Dead, whether the Libel is true or falſe, or if the Party againſt whom it is made is of good or evil Fame, it is nevertheleſs a Libel: For in a ſettled State of Government, the Party grieved ought to complain for every injury done him, in the ordinary Courſe of the Law. And as to its Publication, the Law had taken ſo great Care of Men's Reputations, that if one maliciouſly repeats it, or ſings it in the Prefence of an other, or delivers the Libel or a Copy of it over, to ſcandalize the Party, he is to be puniſhed as a Publiſher of a Libel. He ſaid it was likewiſe evident, that Libelling was an Offence againſt the Law of God. Act. XXIII.* 5. Then ſaid *Paul*, I

wiſt not Brethren, that he was the High Prieſt: For it is written, thou ſhalt not ſpeak evil of the Ruler of the People. 2 *Pet.* X. 11. Deſpiſe Government, preſumptuous are they, ſelf willed, they are not afraid to ſpeak evil of Dignities, *&c. He then inſiſted that it was clear, both by the Law God and Man, That it was a very great Offence to ſpeak evil of, or to revile thoſe in Authority over us; and that Mr.* Zenger *had offended in a moſt notorious and groſs Manner, in ſcandalizing His Excellency our Governour, who is the King's immediate Repreſentative, and the Supream Magiſtrate of this Province: For can there be any Thing more ſcandalous ſaid of a Governour, than what is publiſhed in thoſe Papers? Nay, not only the Governour, but both the Council and Aſſembly are ſcandalized; for there it is plainly ſaid, That* as Matters now ſtand, their Liberties and Properties are precarious, and that Slavery is like to be entailed on them and their Poſterity. *And then again Mr.* Zenger *ſays,* The Aſſembly ought to deſpiſe the Smiles or Frowns of a Governour; That he thinks the Law is at an End; That we ſee Mens Deeds destroyed, Judges arbitrarily diſplaced, new Courts erected, without Conſent of the Legiſlature; *And* That it ſeems Tryals by Juries are taken away when a Governour pleaſes; That none can call any Thing their own, longer than thoſe in the Adminiſtration will condeſcend to let them do it.— — — — — — — — — — — — — — — — *And Mr. Attorney added, that he did not know what could be ſaid in Defence of a Man, that had ſo notoriouſly ſcandalized the Governour and principal Magiſtrates and Officers of the Government, by charging them with depriving the People of their Rights and Liberties, and taking away Tryals by Juries, and in ſhort, putting an End to the Law itſelf.*— — — *If this was not a Libel, he ſaid, he did not know what was one. Such Perſons as will take thoſe Liberties with Governours and Magiſtrates, he thought ought to ſuf-*

fer for ſtirring up Sedition and Diſcontent among the People. And concluded by ſaying, that the Government had been very much traduced and expoſed by Mr. Zenger, *before he was taken Notice of; that at laſt it was the Opinion of the Governour and Council, that he ought not to be ſuffered to go on, to diſturb the Peace of the Government; by publiſhing ſuch Libels againſt the Governour, and the chief Perſons in the Government; And therefore they had directed this Proſecution, to put a Stop to this ſcandalous and wicked Practice, of libelling and defaming His Majeſty's Government and diſturbing his Majeſty's Peace.*

Mr. Chambers *then ſum'd up to the Jury, obſerving with great Strength of Reaſon on Mr. Attorney's defect of Proof, that the Papers in the Information were* Falſe, Malicious or Seditious, *which was incumbent on him to prove to the Jury, and without which they could not on their Oaths ſay,* That they were ſo, as charged.

Mr. *Hamilton.* May it pleaſe Your Honour; I agree with Mr. Attorney, that Government is a ſacred Thing, but I differ very widely from him when he would inſinuate, that the juſt Complaints of a Number of Men, who ſuffer under a bad Adminiſtration, is libelling that Adminiſtration. Had I believed that to be Law, I ſhould not have given the Court the Trouble of hearing any Thing that I could ſay in this Cauſe. I own, when I read the Information, I had not the Art to find out (without the Help of Mr. Attorney's *Innuendo's*) that the Governor was the Perſon meant in every Period of that News Paper; and I was inclined to believe, that they were wrote by ſome, who from an extraordinary Zeal for Liberty, had miſconſtrued the Conduct of ſome Perſons in Authority into Crimes; and that Mr. Attorney out of his too great Zeal for Power, had exhibited this Information, to correct the Indiſcretion of my Client; and at the ſame Time, to ſhew his Superiors the great Concern he had, leſt they ſhould be treated with any undue

Freedom. But from what Mr. Attorney has juſt now ſaid, *to wit*, That this Proſecution was directed by the Governor and Council, and from the Extraordinary Appearance of People of all Conditions, which I obſerve in Court upon this Occaſion, I have Reaſon to think, that thoſe in the Adminiſtration have by this Proſecution ſomething more in View, and that the People believe they have a good deal more at ſtake, than I apprehended: And therefore, as it is become my Duty, to be both plain and particular in this Cauſe, I beg Leave to beſpeak the Patience of the Court.

I was in hopes, as that terrible Court, where thoſe dreadful Judgments were given, and that Law eſtabliſhed, which Mr. Attorney has produced for Authorities to ſupport this Cauſe, was long ago laid aſide, as the moſt dangerous Court to the Liberties of the People of *England*, that ever was known in that Kingdom; that Mr. Attorney knowing this, would not have attempted to ſet up a Star-Chamber here, nor to make their Judgments a Precedent to us: For it is well known, that what would have been judg'd Treaſon in thoſe Days for a Man to ſpeak, I think, has ſince not only been practiced as lawful, but the contrary Doctrine has been held to be Law.

In *Brewſter's* Caſe, for Printing, *That the Subjects might defend their Rights and Liberties by Arms, in caſe the King ſhould go about to deſtroy them*, he was told by the Chief Juſtice that it was a great Mercy, he was not proceeded againſt for his Life; for that to ſay, the King could be reſiſted by Arms in any Caſe whatſoever, was expreſs Treaſon. And yet we ſee ſince that Time, Dr. *Sacheverell* was ſentenced in the higheſt Court in *Great Britain*, for ſaying, *That ſuch a Reſiſtance was not lawful.* Beſides, as Times have made very great Changes in the Laws of *England*, ſo in my Opinion there is good Reaſon that Places ſhould do ſo too.

Is it not ſurprizing to ſee a Subject, upon his receiving a Commiſſion from the King to be a Governor of a Colony in *America*, immediately imagining himſelf to be veſted with all the Prerogatives belonging to the ſacred Perſon of his

Prince? And which is yet more aſtoniſhing, to ſee that a People can be ſo wild as to allow of and acknowledge thoſe Prerogatives and Exemptions, even to their own Deſtruction? Is it ſo hard a Matter to diſtinguiſh between the Majeſty of our Sovereign, and the Power of a Governor of the Plantations? Is not this making very free with our Prince, to apply that Regard, Obedience and Allegiance to a Subject, which is due only to Our Sovereign? And yet in all the Caſes which Mr. Attorney has cited, to ſhew the Duty and Obedience we owe to the Supreme Magiſtrate, it is the King that is there meant and underſtood, tho' Mr. Attorney is pleaſed to urge them as Authorities to prove the Heinouſneſs of Mr. *Zenger's* Offence againſt the Governor of *New-York*. The ſeveral Plantations are compared to ſo many large Corporations, and perhaps not improperly; and can any one give an inſtance, that the Mayor or Head of a Corporation, ever put in a Claim to the ſacred Rights of Majeſty? Let us not (while we are pretending to pay a great Regard to our Prince and His Peace) make bold to transfer that Allegiance to a Subject, which we owe to our King only. What ſtrange Doctrine is it, to preſs every Thing for Law here which is ſo in *England?* I Believe we ſhould not think it a Favour, at preſent at leaſt, to eſtabliſh this Practice. In *England* ſo great a Regard and Reverence is had to the Judges, * that if any Man ſtrikes another in *Weſtminſter Hall*, while the Judges are ſitting, he ſhall loſe his Right Hand, and forfeit his Land and Goods, for ſo doing. And tho' the Judges here claim all the Powers and Authorities within this Government, that a Court of King's Bench has in *England*, yet I believe Mr. Attorney will ſcarcely ſay, that ſuch a Puniſhment could be legally inflicted on a Man for committing ſuch an Offence, in the Preſence of the Judges ſitting in any Court within the Province of *New-York*. The Reaſon is obvious; a Quarrel or Riot in *New-York*, cannot poſſibly be attended with thoſe dangerous Conſequences that it might in *Weſtminſter Hall*; nor (I hope) will it be alledged, that any Miſbehaviour to a

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Governor in the Plantations will, or ought to be, judged of or puniſhed, as a like Undutifulneſs would be, to Our Sovereign. From all which, I hope Mr. Atttorney will not think it proper to apply his Law-Caſes (to ſupport the Cauſe of his Governor) which have only been judged, where the King's Safety or Honour was concerned. It will not be denied but that a Freeholder in the Province of *New-York*, has as good a Right to the ſole and ſeparate Uſe of his Lands, as a Freeholder in *England*, who has a Right to bring an Action of Treſpaſs againſt his Neighbour, for ſuffering his Horſe or Cow to come and feed upon his Land, or eat his Corn, whether incloſed or not incluſed; and yet I believe it would be looked upon as a ſtrange Attempt, for one Man here, to bring an Action againſt another, whoſe Cattle and Horſes feed upon his Grounds not incloſed, or indeed for eating and treading down his Corn, if that were not incloſed. Numberleſs are the Inſtances of this Kind that might be given, to ſhew, that what is good Law at one Time and in one Place, is not ſo at another Time and in another Place; ſo that I think, the Law ſeems to expect, that in theſe Parts of the World Men ſhould take Care, by a good Fence, to preſerve their Property, from the Injury of unruly Beaſts. And perhaps there may be a good Reaſon why Men ſhould take the same Care, to make an honeſt and upright Conduct a Fence and Security againſt the Injury of unruly Tongues.

Mr. Attorney. I don't know what the Gentleman means, by comparing Caſes of Freeholders in *England* with Freeholders here. What has this Caſe to do with Actions of Treſpaſs, or Men's Fencing their Ground? The Caſe before the Court is, whether Mr. *Zenger* is guilty of Libelling His Excellency the Governor of *New-York*, and indeed the whole Adminiſtration of the Government? Mr. *Hamilton*, has confeſſed the Printing and Publiſhing, and I think nothing is plainer, than that the Words in the Information are *ſcandalous, and tend to ſedition, and to diſquiet the Minds of the People of this Province.* And if ſuch Papers are not Libels,

I think it may be ſaid, there can be no ſuch Thing as a Libel.

Mr. *Hamilton.* May it pleaſe Your Honour; I cannot agree with Mr. Attorney: For tho' I freely acknowledge, that there are ſuch Things as Libels, yet I muſt inſiſt at the ſame Time, that what my Client is charged with, is not a Libel; and I obſerved juſt now, that Mr. Attorney in defining a Libel, made uſe of the Words, *ſcandalous, ſeditious, and tend to diſquiet the People;* but (whether with Deſign or not I will not ſay) he omitted the Word *falſe.*

Mr. Attorney. I think I did not omit the Word *falſe:* But it has been ſaid already, that it may be a Libel, notwithſtanding it may be true.

Mr. *Hamilton.* In this I muſt ſtill differ with Mr. Attorney; for I depend upon it, we are to be tried upon this Information now before the Court and Jury, and to which we have pleaded *Not Guilty*, and by it we are charged with Printing and publiſhing *a certain falſe, malicious, ſeditious and ſcandalous Libel.* This Word *falſe* muſt have ſome Meaning, or elſe how came it there? I hope Mr. Attorney will not ſay, he put it there by Chance, and I am of Opinion his Information would not be good without it. But to ſhew that it is the principal Thing which, in my Opinion, makes a Libel, I put the Caſe, the Information had been for printing and publiſhing a certain *true* Libel, would that be the ſame Thing? Or could Mr. Attorney ſupport ſuch an Information by any Precedent in the *Engliſh* Law? No, the Falſhood makes the Scandal, and both make the Libel. And to ſhew the Court that I am in good Earneſt, and to ſave the Court's Time, and Mr. Attorney's Trouble, I will agree, that if he can prove the Facts charged upon us, to be *falſe*, I'll own them to be *ſcandalous*, *ſeditious* and *a Libel.* So the Work ſeems now to be pretty much ſhortned, and Mr. Attorney has now only to prove the Words *falſe*, in order to make us Guilty.

Mr. Attorney. We have nothing to prove; you have

confeſſed the Printing and Publiſhing ; but if it was neceſſary (as I inſiſt it is not) how can we prove a Negative ? But I hope ſome Regard will be had to the Authorities that have been produced, and that ſuppoſing all the Words to be true, yet that will not help them, that Chief Juſtice *Holt* in his Charge to the Jury, in the Caſe of *Tutchin*, made no Diſtinction, whether *Tutchin's* Paper's were *true* or *falſe ;* and as Chief Juſtice *Holt* has made no Diſtinction in that Caſe, ſo none ought to be made here ; nor can it be ſhewn in all that Caſe, there was any Queſtion made about their being *falſe* or *true*.

Mr. *Hamilton*. I did expect to hear, That a Negative cannot be proved ; But every Body knows there are many Exceptions to that general Rule : For if a Man is charged with killing another, or ſtealing his Neighbour's Horſe, if he is innocent, in the one Caſe, he may prove the Man ſaid to be killed, to be really alive ; and the Horſe ſaid to be ſtoln, never to have been out of his Maſter's Stable, *&c.* and this I think is proving a Negative. But we will ſave Mr. Attorney the Trouble of proving a Negative, and take the *Onus probandi* upon our ſelves, and prove thoſe very Papers that are called Libels to be *true*.

Mr. Ch. Juſtice. You cannot be admitted, Mr. *Hamilton*, to give the Truth of a Libel in Evidence. A Libel is not to be juſtified ; for it is nevertheleſs a Libel that it is *true*.

Mr. *Hamilton*. I am ſorry the Court has ſo ſoon reſolved upon that Piece of Law ; I expected firſt to have been heard to that Point. I have not in all my Reading met with an Authority that ſays, we cannot be admitted to give the Truth in Evidence, upon an Information for a Libel.

Mr. Ch. Juſtice. The Law is clear, That you cannot juſtify a Libel.

Mr. *Hamilton*. I own that, may it pleaſe Your Honour, to be ſo ; but, with Submiſſion, I underſtand the Word, *juſtify*, there, to be a juſtification by Plea, as it is in the Caſe upon an Indictment for *Murder*, or an *Aſſault and Battery ;* there

the Priſoner cannot juſtify, but plead *Not Guilty*: Yet it will not be denied but he may, and always is admitted, to give the Truth of the Fact, or any other Matter, in Evidence, which goes to his Acquital; as in Murder, he may prove it was in Defence of his Life, his Houſe, *&c.* and in Aſſault and Battery, he may give in Evidence, that the other Party ſtruck firſt, and in both Caſes he will be acquitted. And in this Senſe I underſtand the Word *juſtify*, when applied to the Caſe before the Court.

Mr. *Ch. Juſtice.* I Pray ſhew that you can give the Truth of a Libel in Evidence.

Mr. *Hamilton.* I am ready, both from what I underſtand to be the Authorities in the Caſe, and from the Reaſon of the Thing, to ſhew that we may lawfully do ſo. But here I beg leave to obſerve, That Informations for Libels is a Child, if not born, yet nurſed up, and brought to full Maturity, in the Court of Star-Chamber.

Mr. Ch. Juſtice. Mr. *Hamilton* you'll find your ſelf miſtaken; for in *Coke's Inſtitutes* you'll find Informations for Libels, long before the Court of Star-Chamber.

Mr. *Hamilton.* I thank Your Honour; that is an Authority I did propoſe to ſpeak to by and by: But as you have mention'd, it I'll read that Authority now. I think it is in 3 *Co. Inſt.* under Title *Libel;* it is the Caſe of *John de Northampton* for a Letter wrote to *Robert de Ferrers*, one of the King's privy Council, *concerning Sir *William Scot*, Chief Juſtice, and his Fellows; but it does not appear to have been upon Information; **Coke* 3 *Inſt.* 174. and I have good Grounds to ſay it was upon Indictment, as was the Caſe of *Adam de Ravenſworth*, juſt mentioned before by Lord *Coke*, under the ſame Title; and I think there cannot be a greater, at leaſt a plainer Authority for us, than the Judgment in the Caſe of *John de Northampton*, which my Lord has ſet down at large. *Et quia prædictus Johannes cognovit dictam Litteram per ſe ſcriptam Roberto de Ferrers, qui eſt de Concilio Regis, qua littera continet in ſenullam veritatem, &c.* Now Sir, by this Judg-

ment it appears the libelous Words were utterly falſe, and there the Falſhood was the Crime, and is the Ground of that Judgment: And is not that what we contend for? Do not we inſiſt that the Falſhood makes the Scandal, and both make the Libel? And how ſhall it be known whether the Words are libelous, *that is*, *true* or *falſe*, but by admitting us to prove them *true*, ſince Mr. Attorney will not undertake to prove them *falſe?* Beſides, is it not againſt common Senſe, that a Man ſhould be puniſhed in the ſame Degree for a *true Libel* (if any ſuch Thing could be) as for a *falſe one?* I know it is ſaid, *That Truth makes a Libel the more provoking, and therefore the Offence is the greater, and conſequently the Judgment ſhould be the heavier.* Well, ſuppoſe it were ſo, and let us agree for once, *That Truth is a greater Sin than Falſhood:* Yet as the Offences are not equal, and as the Puniſhment is arbitrary, *that is*, according as the Judges in their Diſcretion ſhall direct to be inflicted; is it not abſolutely neceſſary that they ſhould know, whether the Libel is *true* or *falſe*, that they may by that Means be able to proportion the Puniſhment? For, would it not be a ſad Caſe, if the Judges, for want of a due Information, ſhould chance to give as ſevere a Judgment againſt a Man for writing or publiſhing a Lie, as for writing or publiſhing a Truth? And yet this (with ſubmiſſion) as monſtrous and ridiculous as it may ſeem to be, is the natural Conſequence of Mr. Attorney's Doctrine, *That Truth makes a worſe Libel than Falſhood*, and muſt follow from his not proving our Papers to be *falſe*, or not ſuffering us to prove them to be *true*. But this is only reaſoning upon the Caſe, and I will now proceed to ſhew, what in my Opinion will be ſufficient to induce the Court, to allow us to prove the Truth of the Words, which in the Information are called Libellous. And firſt, I think there cannot be a greater Authority for us, than the Judgment I juſt now mentioned, in the caſe of *John de Northampton*, and that was in early Times, and before the Star-Chamber came to its Fulneſs of Power and Wickedneſs. In that Judgment, as I obſerved, the *Falſhood* of the

Letter which was wrote, is aſſigned as the very Ground of the Sentence. And agreeable to this it was urged by Sir *Robert Sawyer*, *in the Tryal of the Seven Biſhops, *That the Falſity, the Malice, and Sedition of the Writing, were all Facts to be proved.* But here it may be ſaid, Sir *Robert* was one of the Biſhop's Council, and his Argument is not to be allowed for Law: But I offer it only to ſhew that we are not the firſt who have inſiſted, that to make a Writing a Libel, it muſt be *falſe*. And if the Argument of a Council muſt have no Weight, I hope there will be more Regard ſhewn to the Opinion of a Judge, and therefore I mention the Words of Juſtice *Powel* in the ſame Tryal, where he ſays (of the Petition of the Biſhops, which was called a Libel, and upon which they were proſecuted by Information) That *to make it a Libel, it muſt be falſe and malicious, and tend to Sedition*; and declared, *as he ſaw no Falſhood or Malice in it, he was of Opinion, that it was no Libel.* Now I ſhould think this Opinion alone, in the Caſe of the King, and in a Cafe which that King had ſo much at Heart, and which to this Day has never been contradicted, might be a ſufficient Authority, to entitle us to the Liberty of proving the *Truth* of the Papers, which in the Information are called *falſe, malicious, ſeditious and ſcandalous.* If it be objected, *that the Opinions of the other three Judges were againſt him*; I anſwer, That the Cenſures the Judgments of theſe Men have undergone, and the Approbation Juſtice *Powel's* Opinion, his Judgment and Conduct upon that Tryal has met with, and the Honour he gained to himſelf, for daring to ſpeak Truth at ſuch a Time, upon ſuch an Occaſion, and in the Reign of ſuch a King, is more than ſufficient, in my humble Opinion, to warrant our inſiſting on his Judgment, as a full Authority to our Purpoſe; and it will lye upon Mr. Attorney to ſhew, that his Opinion has ſince that Time been denied to be Law, or that Juſtice *Powel* who delivered it, has ever been condemned or blamed for it, in any Law-Book extant at this Day, and this I will venture to ſay,

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Mr. Attorney cannot do. But to make this Point yet more clear, if any Thing can be clearer, I will on our Part proceed and ſhew, that in the Caſe of Sir *Samuel Barnardiſton*. His Council, notwithſtanding he ſtood before one of the greateſt Monſters that ever preſided in any *Engliſh* Court (Judge *Jefferies*) inſiſted on the Want of Proof, to the *Malice* and *ſeditious Intent* of the Author, of what was called a *Libel*. And in the Caſe of *Tutchin*, which ſeems to be Mr. Attorney's chief Authority, that Caſe is againſt him; for he was, upon his Tryal put upon ſhewing the Truth of his Papers, but did not, at leaſt the Priſoner was aſked, by the King's Council, whether he would ſay they were *true?* And as he never pretended, that they were true, the Chief Juſtice was not to ſay ſo. But the Point will ſtill be clearer on our Side from *Fuller's* Caſe, *For falſly and wickedly cauſing to be printed a falſe and ſcandalous Libel, in which (amongſt other Things) were contained theſe Words, 'Mr.* Jones *has alſo made Oath, That he paid* L.5000. *more, by the late King's Order, to ſeveral 'Perſons in Places of Truſt, that they might compleat my Ruin, 'and invalidate me forever. Nor is this all; for the ſame Mr. 'Jones will prove by undeniable Witneſs and Demonſtration, 'that he has diſtributed more than* L.180,000. *in Eight Years 'laſt paſt, by the French King's Order, to Perſons in publick 'Truſt in this Kingdom.'* Here you ſee is a ſcandalous and infamous Charge againſt the late King; here is a Charge no leſs than High Treaſon, againſt the *Men in publick Truſt*, for receiving Money of the *French* King, then in actual War with the Crown of *Great Britain*; and yet the Court were far from bearing him down with that Star Chamber Doctrine, *to wit, That it was no matter, whether what he ſaid was true or falſe;* no, on the contrary, Lord Chief Juſtice *Holt* aſks *Fuller, Can you make it appear, they are true? Have you any Witneſſes? You might have had* Subpœna's *for your Witneſſes againſt this Day. If you take upon you to write ſuch Things as you are charged with, it lies upon you to prove them*

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true, at your Peril. If you have any Witneſſes, I will hear them. How came you to write thoſe Books which are not true? If you have any Witneſſes, produce them. If you can offer any Matter to prove what you have wrote, let us hear it. Thus ſaid, and thus did, that great Man Lord Chief Juſtice *Holt*, upon a Tryal of the like Kind with ours, and the Rule laid down by him in this Caſe is, *That he who will take upon him to write Things, it lies upon him to prove them, at his Peril.* Now, Sir, we have acknowledged the Printing and Publiſhing of thoſe Papers, ſet forth in the Information, and (with the Leave of the Court) agreeable to the Rule laid down by Chief Juſtice *Holt*, we are ready to prove them to be true, at our Peril.

Mr. Chief Juſtice. Let me ſee the Book.

Here the Court had the Caſe under Conſideration, a conſiderable Time, and every one was ſilent.

Mr. Ch. Juſt. Mr. Attorney, you have heard what Mr. *Hamilton* has ſaid, and the Caſes he has cited, for having his Witneſſes examined, to prove the Truth of the ſeveral Facts contained in the Papers ſet forth in the Information, what do you ſay to it?

Mr. Attorney. The Law in my Opinion is very clear; they cannot be admitted to juſtify a Libel; for, by the Authorities I have already read to the Court, it is not the leſs a Libel becauſe it is true. I think I need not trouble the Court with reading the Caſes over again; the Thing ſeems to be very plain, and I ſubmit it to the Court.

Mr. Ch. Juſt. Mr. *Hamilton*, the Court is of Opinion, you ought not to be permitted to prove the Facts in the Papers: Theſe are the Words of the Book, '*It is far from* '*being a Juſtification of a Libel, that the Contents thereof are* '*true, or that the Perſon upon whom it is made, had a bad* '*Reputation, ſince the greater Appearance there is of Truth in* '*any malicious Invective, ſo much the more provoking it is.*'

Mr. *Hamilton.* Theſe are Star Chamber Cases, and

I was in hopes, that Practice had been dead with the Court.

Mr. Ch. Juſt. Mr. *Hamilton*, the Court have delivered their Opinion, and we expect you will uſe us with good Manners; you are not to be permitted to argue againſt the Opinion of the Court.

Mr. *Hamilton.* With Submiſſion, I have ſeen the Practice in very great Courts, and never heard it deemed unmannerly to - - - - - -

Mr. Ch. Juſt. After the Court have declared their Opinion, it is not good Manners to inſiſt upon a Point, in which you are over-ruled.

Mr. *Hamilton.* I will ſay no more at this Time; the Court I ſee is againſt us in this Point; and that I hope I may be allowed to ſay.

Mr. Ch. Juſt. Uſe the Court with good Manners, and you ſhall be allowed all the Liberty you can reaſonably deſire.

Mr. Hamilton. I thank Your Honour. Then Gentlemen of the Jury, it is to you we muſt now appeal, for Witneſſes to the Truth of the Facts we have offered, and are denied the Liberty to prove; and let it not ſeem ſtrange, that I apply myſelf to you in this Manner, I am warranted ſo to do both by Law and Reaſon. The Law ſuppoſes you to be ſummoned, *out of the Neighbourhood where the Fact is alledged to be committed*; and the Reaſon of your being taken out of the Neighbourhood is, *becauſe you are ſuppoſed to have the beſt Knowledge of the Fact that is to be tried.* And were you to find a Verdict againſt my Client, you muſt take upon you to ſay, the Papers referred to in the Information, and which we acknowledge we printed and publiſhed, are *falſe, ſcandalous and ſeditious;* but of this I can have no Apprehenſion. You are Citizens of *New York*; you are really what the Law ſuppoſes you to be, *honeſt and lawful Men*; and, according to my Brief, the Facts which we offer to prove were not committed in a Corner; they are notoriously known to be true; and therefore in your Juſtice lies

our Safety. And as we are denied the Liberty of giving Evidence, to prove the Truth of what we have publiſhed, I will beg Leave to lay it down as a ſtanding Rule in ſuch Caſes, *That the ſuppreſſing of Evidence ought always to be taken for the ſtrongest Evidence;* and I hope it will have that Weight with you. But ſince we are not admitted to examine our Witneſſes, I will endeavour to ſhorten the Diſpute with Mr. Attorney, and to that End, I deſire he would favour us with ſome Standard Definition of a Libel, by which it may be certainly known, whether a Writing be a Libel, yea or not.

Mr. Attorney. The Books, I think, have given a very full Definition of a Libel; they ſay it is *in a ſtrict Senſe taken for a malicious Defamation, expreſſed either in Printing or Writing, and tending either to blacken the Memory of one who is dead, or the Reputation of one who is alive, and to expoſe him to public Hatred, Contempt or Ridicule.* § ?. *But it is ſaid, That in a larger Senſe, the Notion of a Libel may be applied to any Defamation whatſoever, expreſſed either by Signs or Pictures, as by fixing up a Gallows againſt a Man's Door, or by painting him in a ſhameful and ignominious Manner.* §. 3. *And ſince the chief Cauſe for which the Law ſo ſeverely puniſhes all Offences of this Nature, is the direct Tendency of them to a Breach of Publick Peace, by provoking the Parties injured, their Friends and Families to Acts of Revenge, which it would be impoſſible to reſtrain by the ſevereſt Laws, were there no Redreſs from Publick Juſtice for Injuries of this kind, which of all others are moſt ſenſibly felt; and ſince the plain Meaning of ſuch Scandal as is expreſſed by Signs or Pictures, is as obvious to common Senſe, and as eaſily underſtood by every common Capacity, and altogether as provoking as that which is expreſſed by Writing or Printing, why ſhould it not be equally criminal?* §. 4. *And from the ſame Ground it ſeemeth alſo clearly to follow, That ſuch ſcandal as is expreſſed in a ſcoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expreſſed in direct Terms; as where a Writing,*

1 *Hawk. Chap.* LXXIII. §. 1. & *ſeq.*

in a taunting Manner reckoning up ſeveral Acts of publick Charity done by one, ſays You will not play the Jew, nor the Hypocrite, *and ſo goes on in a Strain of Ridicule to inſinuate, that what he did was owing to his Vain-Glory; or where a Writing, pretending to recommend to one the Characters of ſeveral great Men for his Imitation, inſtead of taking Notice of what they are generally eſteemed famous for, pitched on ſuch Qualities only which their Enemies charge them with the Want of, as by propoſing ſuch a one to be imitated for his Courage, who is known to be a great Stateſman, but no Soldier, and another to be imitated for his Learning, who is known to be a great General, but no Scholar*, &c. *which Kind of Writing is as well underſtood to mean only to upbraid the Parties with the Want of these Qualities, as if it had directly and expreſſly done ſo.*

Mr. *Hamilton.* Ay, Mr. Attorney; but what Standard Rule have the Books laid down, by which we can certainly know, whether the Words or the Signs are malicious? Whether they are defamatory? Whether they tend to the Breach of the Peace, and are a ſufficient Ground to provoke a Man, his Family, or Friends to Acts of Revenge, eſpecially thoſe of the ironical ſort of Words? And what Rule have you to know when I write ironically? I think it would be hard, when I ſay, *ſuch a Man is a very worthy honeſt Gentleman, and of fine Underſtanding*, that therefore I meant *he was a Knave or a Fool.*

Mr. Attorney. I think the Books are very full; it is ſaid in 1 *Hawk. p.* 193. juſt now read, *That ſuch Scandal as is expreſſed in a ſcoffing and ironical Manner, makes a Writing as properly a Libel, as that which is expreſſed in direct Terms; as where a Writing, in a taunting Manner ſays, reckoning up ſeveral Acts of Charity done by one, ſays*, you will not play the Jew or the Hypocrite, *and ſo goes on to inſinuate, that what he did was owing to his Vain-Glory, &c. Which Kind of Writing is as well underſtood to mean only to upbraid the Parties with the Want of theſe Qualities, as if it had directly and expreſly done ſo.* I think nothing can be plainer or more full than theſe Words.

Mr. *Hamilton.* I agree the Words are very plain, and I ſhall not ſcruple to allow (when we are agreed that the Words are *falſe and ſcandalous, and were ſpoken in an ironical and ſcoffing Manner, &c.*) that they are really *libellous;* but here ſtill occurs the Uncertainty, which makes the Difficulty to know, what Words are *ſcandalous*, and what not; for you ſay, they may be *ſcandalous, true* or *falſe*; beſides, how ſhall we know whether the Words were ſpoke in a *ſcoffing and ironical Manner*, or ſeriouſly? Or how can you know, whether the Man did not think as he wrote? For by your Rule, if he did, it is no *Irony*, and conſequently no *Libel.* But under Favour, Mr. Attorney, I think the ſame Book, and the ſame Section will ſhew us the only Rule by which all theſe Things are to be known. The Words are theſe; *which Kind of Writing is as well* UNDERSTOOD *to mean only to upbraid the Parties with the Want of theſe Qualities, as if they had directly and expreſsly done ſo.* Here it is plain, the Words are *ſcandalous, ſcoffing and ironical*, only as they are UNDERSTOOD. I know no Rule laid down in the Books but this, I mean, as the Words are *underſtood.*

Mr. Ch. Juſt. Mr. *Hamilton*, do you think it ſo hard to know, when Words are ironical, or ſpoke in a ſcoffing Manner?

Mr. *Hamilton.* I own it may be known; but I inſiſt, the only Rule to know is, as I do or can *underſtand* them; I have no other Rule to go by, but as I *underſtand* them.

Mr. Ch. Juſt. That is certain. All Words are libellous or not, as they are *underſtood.* Thoſe who are to judge of the Words, muſt judge whether they *are ſcandalous* or *ironical, tend to the Breach of the Peace*, or are *ſeditious*: There can be no Doubt of it.

Mr. *Hamilton.* I thank Your Honour; I am glad to find the Court of this Opinion. Then it follows that thoſe twelve Men muſt *underſtand* the Words in the Information to be *ſcandalous*, that is to ſay *falſe*; for I think it is not pretended they are of the *ironical* Sort; and when they un-

derſtand the Words to be ſo, they will ſay we are guilty of Publiſhing a *falſe Libel*, and not otherwiſe.

Mr. Ch. Juſt. No, Mr. *Hamilton*; the Jury may find that *Zenger* printed and publiſhed thoſe Papers, and leave it to the Court to judge whether they are libellous; you know this is very common; it is in the Nature of a ſpecial Verdict, where the Jury leave the Matter of Law to the Court.

Mr. *Hamilton.* I know, may it pleaſe Your Honour, the Jury may do ſo; but I do likewiſe know, they may do otherwiſe. I know they have the Right beyond all Diſpute, to determine both the Law and the Fact, and where they do not doubt of the Law, they ought to do ſo. This of leaving it to Judgment of the Court, *whether the Words are libellous or not*, in Effect renders Juries uſeleſs (to ſay no worſe) in many Caſes; but this I ſhall have Occaſion to ſpeak to by and by; and I will with the Court's Leave proceed to examine the Inconveniences that muſt inevitably ariſe from the Doctrines Mr. Attorney has laid down; and I obſerve, in ſupport of this Proſecution, he has frequently repeated the Words taken from the Caſe of *Libel. famosus*, in 5 *Co.* This is indeed the leading Caſe, and to which almoſt all the other Caſes upon the Subject of Libels do refer; and I muſt inſiſt upon saying, That according as this Caſe ſeems to be underſtood by the [Court *] and Mr. Attorney, it is not Law at this Day: For tho' I own it to be baſe and unworthy, to ſcandalize any Man, yet I think it is even vilainous to ſcandalize a Perſon of publick Character, and I will go ſo far into Mr. Attorney's Doctrine as to agree, that if the Faults, Miſtakes, nay even the Vices of ſuch a Perſon be private and perſonal, and don't affect the Peace of the Publick, or the Liberty or Property, of our Neighbour, it is unmanly and unmannerly to expoſe them either by Word or Writing. But when a Ruler of a People brings his perſonal Failings, but much more his Vices, into

* The word "Court" is written in a blank space in the original printed edition.

his Adminiſtration, and the People find themſelves affected by them, either in their Liberties or Properties, that will alter the Caſe mightily; and all the high Things that are ſaid in Favour of Rulers, and of Dignities, and upon the ſide of Power, will not be able to ſtop People's Mouths when they feel themſelves oppreſſed, I mean in a free Government. It is true in Times paſt it was a Crime to ſpeak Truth, and in that terrible Court of Star Chamber, many worthy and brave Men ſuffered for ſo doing; and yet even in that Court, and in thoſe bad Times, a great and good Man durſt ſay, what I hope will not be taken amiſs of me to ſay in this Place, *to wit, The Practice of Informations for Libels is a Sword in the Hands of a wicked King, and an arrand Coward, to cut down and deſtroy the innocent; the one cannot, becauſe of his high Station, and the other dares not, becauſe of his Want of Courage, revenge himſelf in another Manner.*

Mr. Attorney. Pray Mr. *Hamilton*, have a Care what you ſay, don't go too far neither, I don't like those Liberties.

Mr. Hamilton. Sure, Mr. Attorney, you won't make any Applications; all Men agree that we are governed by the beſt of Kings, and I cannot ſee the Meaning of Mr. Attorney's Caution; my well known Principles, and the Senſe I have of the Bleſſings we enjoy under His preſent Majeſty, makes it impoſſible for me to err, and I hope, even to be ſuſpected, in that Point of Duty to my King. May it pleaſe Your Honour, I was ſaying, that notwithſtanding all the Duty and reverence claimed by Mr. Attorney to Men in Authority, they are not exempt from obſerving the Rules of common Juſtice, either in their private or publick Capacities; the Laws of our Mother Country know no Exemption. It is true, Men in Power are harder to be come at for wrongs they do, either to a private Perſon, or to the publick; eſpecially a Governour in the Plantations, where they inſiſt upon an Exemption from Anſwering Complaints of any kind in their own Government. We are indeed told,

and it is true they are obliged to anſwer a Suit in the King's Courts at *Weſtminſter*, for a Wrong done to any Perſon here: But do we not know how impracticable this is to moſt Men among us, to leave their Families (who depend upon their Labour and Care for their Livelihood) and carry Evidences to *Britain*, and at a great, nay, a far greater Expence than almoſt any of us are able to bear, only to proſecute a Governour for an Injury done here. But when the Oppreſſion is general there is no Remedy even that Way, no, our Conſtitution has (bleſſed be God) given Us an Opportunity, if not to have ſuch Wrongs redreſſed, yet by our Prudence and Reſolution we may in a great meaſure prevent the committing of ſuch Wrongs, by making a Governour ſenſible that it is his intereſt to be juſt to those under his Care; for ſuch is the Senſe that Men in General (I mean Freemen) have of common Juſtice, that when they come to know, that a chief Magiſtrate abuſes the Power with which he is truſted, for the good of the People, and is attempting to turn that very Power againſt the Innocent, whether of high or low degree, I ſay, Mankind in general ſeldom fail to interpoſe, and as far as they can, prevent the Deſtruction of their fellow Subjects. And has it not often been ſeen (I hope it will always be ſeen) that when the Repreſentatives of a free People are by juſt Repreſentations or Remonſtrances, made ſenſible of the ſufferings of their Fellow-Subjects, by the Abuſe of Power in the Hands of a Governour, they have declared (and loudly too) that they were not obliged by any Law to ſupport a Governour who goes about to deſtroy a Province or Colony, or their Privileges, which by His Majeſty he was appointed, and by the Law he is bound to protect and encourage. But I pray it may be conſidered, of what Uſe is this mighty Privilege, if every Man that ſuffers muſt be ſilent? And if a Man muſt be taken up as a Libeller, for telling his ſufferings to his Neighbour? I know it may be anſwered, *Have you not a Legiſlature? Have you not a Houſe of Repreſentatives to whom you may complain?* And to this I anſwer, we have.

But what then? Is an Aſſembly to be troubled with every Injury done by a Governour? Or are they to hear of nothing but what thoſe in the Adminiſtration will pleaſe to tell them? Or what Sort of a Tryal muſt a Man have? And how is he to be remedied; eſpecially if the Caſe were, as I have known it to happen in *America* in my Time; That a Governour who has Places (I will not [ſay]* Penſions, for I believe they ſeldom give that to another which they can take to themſelves) to beſtow, and can or will keep the ſame Aſſembly (after he has modeled them ſo as to get a Majority of the Houſe in his Intereſt) for near *twice Seven Years* together? I pray, what Redreſs is to be expected for a honeſt Man, who makes his Complaint againſt a Governour, to an Aſſembly who may properly enough be ſaid, to be made by the ſame Governour againſt whom the Complaint is made? The Thing anſwers it ſelf. No, it is natural, it is a Privilege, I will go farther, it is a Right which all Freemen claim, and are entitled to complain when they are hurt; they have a Right publickly to remonſtrate the Abuſes of Power, in the ſtrongeſt Terms, to put their Neighbours upon their Guard, againſt the Craft or open Violence of Men in Authority, and to aſſert with Courage the Senſe they have of the Bleſſings of Liberty, the Value they put upon it, and their Reſolution at all Hazards to preſerve it, as one of the greateſt Bleſſings Heaven can beſtow. And when a Houſe of Aſſembly compoſed of honeſt Freemen ſees the general Bent of the Peoples Inclinations, That is it which muſt and will (I'm ſure it ought to) weigh with a Legiſlature, in Spite of all the Craft, Carreſſing and Cajoling, made uſe of by a Governour, to divert them from harkning to the Voice of their Country. As we all very well underſtand the true Reaſon, why Gentlemen take ſo much Pains and make ſuch great Intereſt to be appointed Governours, ſo is the Deſign of their Appointment not leſs manifeſt. We know his Majeſty's gracious Intentions to his Subjects; he deſires no more than

* Supplied in contemporary manuscript in the original.

that his People in the Plantations ſhould be kept up to their Duty and Allegiance to the Crown of *Great Britain*, that Peace may be preſerved amongſt them, and Juſtice impartially adminiſtred; that we may he governed ſo as to render us uſeful to our Mother Country, by encouraging us to make and raiſe ſuch Commodities as may be uſeful to *Great Britain*. But will any one ſay, that all or any of theſe good Ends are to be effected, by a Governour's ſetting his People together by the Ears, and by the Aſſiſtance of one Part of the People to plague and plunder the other? The Commiſſion which Governour's bear, while they execute the Powers given them, according to the Intent of the Royal Grantor, expreſſed in their Commiſſions, requires and deſerved very great Reverence and Submiſſion; but when a Governour departs from the Duty enjoyned him by his Sovereign, and acts as if he was leſs accountable than the Royal Hand that gave him all that Power and Honour that he is poſſeſſed of; this ſets People upon examining and enquiring into the Power, Authority and Duty of ſuch a Magiſtrate, and to compare thoſe with his Conduct, and juſt as far as they find he exceeds the Bounds of his Authority, or falls ſhort in doing impartial Juſtice to the People under his Adminiſtration, ſo far they very often, in return, come ſhort in their Duty to ſuch a Governour. For Power alone will not make a Man beloved, and I have heard it obſerved, That the Man who was neither good nor wiſe before his being made a Governour, never mended upon his Preferment, but has been generally obſerved to be worſe: For Men who are not endued with Wiſdom and Virtue, can only be kept in Bounds by the Law; and by how much the further they think themſelves out of the Reach of the Law, by ſo much the more wicked and cruel Men are. I wiſh there were no Inſtances of the Kind at this Day. And wherever this happens to be the Caſe of a Governour, unhappy are the People under his Adminiſtration, and in the End he will find himſelf ſo too; for the People will neither love him nor ſupport him. I make no Doubt but there are

thoſe here, who are zealouſly concerned for the Succeſs of this Proſecution, and yet I hope they are not many, and even ſome of thoſe, I am perſuaded (when they conſider to what Lengths ſuch Proſecutions may be carried, and how deeply the Liberties of the People may be affected by ſuch Means) will not all abide by their preſent Sentiments; I ſay, *Not All:* For the Man who from an Intimacy and Acquaintance with a Governour has conceived a perſonal Regard for him, the Man who has felt none of the Strokes of his Power, the Man who believes that a Governour has a Regard for him and confides in him, it is natural for ſuch Men to wiſh well to the Affairs of ſuch a Governour; and as they may be Men of Honour and Generoſity, may, and no Doubt will, wiſh him Succeſs, ſo far as the Rights and Privileges of their Fellow Citizens are not affected. But as Men of Honour, I can apprehend nothing from them; they will never exceed that Point. There are others that are under ſtronger Obligations, and thoſe are ſuch, as are in ſome Sort engaged in Support of a Governour's Cauſe, by their own or their Relations Dependance on his Favour, for ſome Poſt or Preferment; ſuch Men have what is commonly called Duty and Gratitude, to influence their Inclinations, and oblige them to go his Lengths. I know Men's Intereſts are very near to them, and they will do much rather than foregoe the Favour of a Governour, and a Livelihood at the ſame Time; but I can with very juſt Grounds hope, even from thoſe Men, whom I will ſuppoſe to be Men of Honour and Conſcience too, that when they ſee, the Liberty of their Country is in Danger, either by their Concurrence, or even by their Silence, they will like *Engliſhmen*, and like themſelves, freely make a Sacrifice of any Preferment or Favour rather than be acceſſary to deſtroying the Liberties of their Country, and entailing Slavery upon their Poſterity. There are indeed another ſet of Men, of whom I have no Hopes, I mean ſuch, who lay aſide all other Conſiderations, and are ready to joyn with Power in any Shapes, and with any Man or Sort of Men, by whoſe Means or Intereſt they

may be aſſiſted to gratify their Malice and Envy againſt thoſe whom they have been pleaſed to hate; and that for no other Reaſon, but becauſe they are Men of Abilities and Integrity, or at leaſt are poſſeſſed of ſome valuable Qualities, far ſuperiour to their own. But as Envy is the Sin of the Devil, and therefore very hard, if at all, to be repented of, I will believe there are but few of this deteſtable and worthleſs Sort of Men, nor will their Opinions or Inclinations have any influence upon this Tryal. But to proceed; I beg Leave to inſiſt, That the Right of complaining or remonſtrating is natural; And the Reſtraint upon this natural Right is the Law only, and that thoſe Reſtraints can only extend to what is *falſe*: For as it is Truth alone which can excuſe or juſtify any Man for complaining of a bad Adminiſtration, I as frankly agree, that nothing ought to excuſe a Man who raiſes a falſe Charge or Accusation, even againſt a private Perſon, and that no manner of Allowance ought to be made to him, who does ſo againſt a publick Magiſtrate. *Truth* ought to govern the whole Affair of Libels, and yet the Party accuſed runs Riſque enough even then; for if he fails in proving every Tittle of what he has wrote, and to the Satisfaction of the Court and Jury too, he may find to his Coſt, that when the Proſecution is ſet on Foot by Men in Power, it ſeldom wants Friends to Favour it. And from thence (it is ſaid) has ariſen the great Diverſity of Opinions among Judges, about what Words were or were not ſcandalous or libellous. I believe it will be granted, that there is not greater Uncertainty in any Part of the Law, than about Words of Scandal; it would be miſpending of the Court's Time to mention the Caſes; they may be ſaid to be numberleſs; and therefore the utmoſt Care ought to be taken in following Precedents; and the Times when the Judgments were given, which are quoted for Authorities in the Caſe of Libels, are much to be regarded. I think it will be agreed, That ever ſince the Time of the Star Chamber, where the moſt arbitrary and deſtructive Judgments and Opinions

were given, that ever an *Engliſhman* heard of, at leaſt in his own Country: I ſay, Proſecutions for Libels ſince the Time of that arbitrary Court, and until the glorious Revolution, have generally been ſet on Foot at the Inſtance of the Crown or its Miniſters; and it is no ſmall Reproach to the Law, that theſe Proſecutions were too often and too much countenanced by the Judges, who held their Places at Pleaſure, (a diſagreeable Tenure to any Officer, but a dangerous one in the Caſe of a Judge.) To ſay more to this Point may not be proper. And yet I cannot think it unwarrantable, to ſhew the unhappy influence that a Sovereign has ſometimes had, not only upon Judges, but even upon Parliaments themſelves.

It has already been ſhewn, how the Judges differed in their Opinions about the Nature of a Libel, in the Caſe of the ſeven Biſhops. There you ſee three Judges of one Opinion, that is, of a wrong Opinion, in the Judgment of the beſt Men in *England*, and one Judge of a right Opinion. How unhappy might it have been for all of us at this Day, if that Jury had underſtood the Words in that Information as the Court did? Or if they had left it to the Court, to judge whether the Petition of the Biſhops was or was not a Libel? No they took upon them, to their immortal Honour! To determine both *Law* and *Fact*, and to *underſtand* the Petition of the Biſhops *to be no Libel, that is, to contain no falſhood nor Sedition*, and therefore found them *Not Guilty*. And remarkable is the Caſe of Sir *Samuel Barnardiſton*, who was fined 10,000*L*. for Writing a Letter, in which, it may be ſaid, none ſaw any Scandal or Falſhood but the Court and Jury; for that Judgment was afterwards looked upon as a cruel and deteſtable Judgment, and therefore was reverſed by Parliament. Many more Inſtances might be given of the Complaiſance of Court-Judges, about thoſe Times, and before; but I will mention only one Caſe more, and that is the Caſe of Sir *Edward Hales*, who tho' a *Roman Catholick*, was by King *James* II. prefered to be a Colonel of his Army, notwithſtanding the Statute of 25 *Cha.* 2*d*

Chap. 2. by which it is provided, *That every one that accepts of an Office, Civil or Military, &c. ſhall take the Oaths, ſubſcribe the Declaration, and take the Sacrament, within three Months, &c. otherwiſe he is diſabled to hold ſuch Office, and the Grant for the ſame to be null and void, and the Party to forfeit* 500l. Sir *Edward Hales* did not take the Oaths or Sacrament, and was proſecuted for the 500*l.* for exerciſing the Office of a Colonel by the Space of three Months, without conforming as in the Act is directed. Sir *Edward* pleads, *That the King by His Letters Patents did diſpence with his taking the Oaths and Sacrament, and ſubſcribing the Declaration, and had pardoned the forfeiture of* 500*l.* And *whether the King's Diſpenſation was good, againſt the ſaid Act of Parliament?* was the queſtion. I ſhall mention no more of this Caſe, than to ſhew how in the Reign of an arbitrary Prince, where Judges hold their Seats at Pleaſure, their Determinations have not always been ſuch as to make Precedents of, but the Contrary; and ſo it happened in this Caſe, where it was ſolemnly judged, *That, notwithſtanding this Act of Parliament, made in the ſtrongeſt Terms, for Preſervation of the Proteſtant Religion, That yet the King had, by His Royal Prerogative, a Power to diſpence with that Law;* and Sir *Edward Hales* was acquitted by the Judges accordingly. So the King's Diſpenſing Power, being by the Judges ſet up above the Act of Parliament, this Law, which the People looked upon as their chief Security againſt Popery and Arbitrary Power, was by this Judgment rendred altogether ineffectual. But this Judgment is ſufficiently expoſed by Sir *Edward Atkins*, late one of the Judges of the Court of Common Pleas in his *Enquiry into the King's Power of diſpenſing with pœnal Statutes;* where it is ſhewn, *Who it was that firſt invented Diſpenſations; how they came into* England; *what ill Uſe has been made of them there; and all this principally owing to the Countenance given them by the Judges.* He ſays of the Diſpenſing Power, * *The Pope was the Inventor of it; our Kings have bor-*

Sir *Edw. Atkins's* Enquiry into the Power of Diſpenſing with pœnal Statutes.

* Poſtſcript to the *Enquiry pag.* 51.

rowed it from them; and the Judges have from Time to Time nurſed and dreſſed it up, and given it Countenance; and it is ſtill upon the Growth, and encroaching, 'till it has almoſt ſubverted all Law, and made the regal Power abſolute if not diſſolute. This ſeems not only to ſhew how far Judges have been influenced by Power, and how little Caſes of this Sort, where the Prerogative has been in Queſtion in former Reigns, are to be relied upon for Law: But I think it plainly ſhews too, that a Man may uſe a greater Freedom with the Power of His Sovereign and the Judges in *Great-Britain*, than it ſeems he may with the Power of a Governour in the Plantations, who is but a Fellow Subject. Are theſe Words with which we are charged, like theſe? Do Mr. *Zenger's* Papers contain any ſuch Freedoms with his Governour or His Council, as Sir *Edward Atkins* has taken, with the Regal Power and the Judges in *England?* And yet I never heard of any Information brought againſt him for theſe Freedoms.

If then upon the whole there is ſo great an Uncertainty among Judges (learned and great Men) in Matters of this Kind; If Power has had ſo great an Influence on Judges; how cautious ought we to be in determining by their Judgments, eſpecially in the Plantations, and in the Caſe of Libels? There is Hereſy in Law, as well as in Religion, and both have changed very much; and we well know that it is not two Centuries ago that a Man would have been burnt as an Heretick, for owning ſuch Opinions in Matters of Religion as are publickly wrote and printed at this Day. They were fallible Men, it ſeems, and we take the Liberty not only to differ from them in religious Opinions, but to condemn them and their Opinions too; and I muſt preſume, that in taking theſe Freedoms in thinking and ſpeaking about Matters of Faith or Religion, we are in the right: For tho' it is ſaid there are very great Liberties of this Kind taken in *Newe York*, yet I have heard of no Information preferred by Mr. Attorney for any Offences of this Sort. From which I think it is pretty clear, That in *New-York*, a Man may

make very free with his God, but he muſt take ſpecial Care what he ſays of his Governour. It is agreed upon by all Men, that this is a Reign of Liberty; and while Men keep within the Bounds of Truth, I hope they may with Safety both ſpeak and write their Sentiments of the Conduct of Men in Power I me[a]n of that Part of their Conduct only, which affects the Liberty or Property of the People under their Adminiſtration; were this to be denied, then the next Step may make them Slaves: For what Notions can be entertained of Slavery, beyond that of ſuffering the greateſt injuries and Oppreſſions, without the Liberty of complaining; or if they do, to be deſtroyed, Body and Eſtate, for ſo doing?

It is ſaid and inſiſted on by Mr. Attorney, *That Government is a ſacred Thing; That it is to be ſupported and reverenced; It is Government that protects our Perſons and Eſtates; That prevents Treaſons, Murders, Robberies, Riots, and all the Train of Evils that overturns Kingdoms and States, and ruins particular Perſons; and if thoſe in the Adminiſtration, eſpecially the Supream Magiſtrate muſt have all their Conduct cenſured by private Men, Government cannot ſubſiſt.* This is called *a Licentiouſneſs not to be tollerated.* It is ſaid, *That it brings the Rulers of the People into Contempt, and their Authority not to be regarded, and ſo in the End the Laws cannot be put in Execution.* Theſe I ſay, and ſuch as theſe, are the general Topicks inſiſted upon by Men in Power, and their Advocates. But I wiſh it might be conſidered at the ſame Time, How often it has happened, that the Abuſe of Power has been the primary Cauſe of theſe Evils, and that it was the Injuſtice and Oppreſſion of theſe great Men, which has commonly brought them into Contempt with the People. The Craft and Art of ſuch Men is great, and who, that is the leaſt acquainted with Hiſtory or Law, can be ignorant of the ſpecious Pretences, which have often been made uſe of by Men in Power, to introduce arbitrary Rule, and deſtroy the Liberties of a free People. I will give two Inſtances; and as they are Authorities not to be denied, nor can be miſunderſtood, I preſume they will be ſufficient.

The *firſt* is the Statute of *3d* of *Hen.* 7. *Cap.* 1. The Preamble of the Statute will prove all, and more than I have alledged. It begins, '*The King Our Sovereign Lord re-* '*membereth how by unlawful Maintenances, giving of Liveries,* '*Signs and Tokens, &c. untrue Demeanings of Sheriffs in mak-* '*ing of Pannels, and other untrue Returns, by taking of Money,* '*by Injuries, by great Riots and unlawful Aſſemblies; the* '*Policy and good Rule of this Realm is almoſt ſubdued; and for* '*the not puniſhing theſe Inconveniences, and by Occaſion of the* '*Premiſſes, little or nothing may be found by Inquiry, &c. to* '*the increaſe of Murders, &c. and unſureties of all Men living,* '*and Loſſes of their Lands and Goods.*' Here is a fine and ſpecious Pretence for introducing the Remedy, as it is called, which is provided by this Act, *that is*; inſtead of being lawfully accuſed by 24 good and lawful Men of the Neighbourhood, and afterwards tried by 12 like lawful Men, here is a Power given to the Lord Chancellor, Lord Treaſurer, the Keeper of the King's privy Seal, or two of them, calling to them a Biſhop, a temporal Lord, and other great Men mentioned in the Act, (whom, it is to be obſerved, were all to be Dependants on the Court) to receive Information againſt any Perſon for any of the Miſbehaviours recited in that Act, and by their Diſcretion to examine, and to puniſh them according to their demerit.

The ſecond Statute I propoſed to mention, is the 11*th* of the ſame King, *Chap. 3d.* the Preamble of which Act has the like fair Pretences as the former; *for the King calling to his Remembrance the good Laws made againſt the receiving of Liveries, &c. unlawful Extortions, Maintenances, Embracery, &c. unlawful Games, &c. and many other great Enormitys, and Offences committed againſt many good Statutes, to the Diſpleaſure of Almighty God, which,* the Act ſays, *could not, nor yet can, be conveniently puniſhed by the due Order of the Law, except it were firſt found by* 12 *Men, &c. which, for the Cauſes aforeſaid, will not find nor yet preſent the Truth.* And therefore the ſame Statute directs, *that the Juſtices of Aſſize, and Juſtices of the Peace, ſhall, upon Information for the King before*

them made, have full Power, by their Diſcretion, to hear and determine all ſuch Offences. Here are two Statutes that are allowed to have given the deepeſt Wound to the Liberties of the People of *England* of any that I remember to have been made, unleſs it may be ſaid, that the Statute made in the Time of *Henry 8th*, by which his Proclamations were to have the effect of Laws, might in its Conſequence be worſe. And yet we ſee the plauſible Pretences found out by the great Men to procure theſe Acts. And it may juſtly be ſaid, That by thoſe Pretences the People of *England* were cheated or aw'd into the Delivering up their antient and ſacred Rights of Tryals by Grand and Petit Juries. I hope to be excuſed for this Expreſſion, ſeeing my Lord *Coke* calls it *an unjuſt and ſtrange Act, that tended in its execution to the great Diſpleaſure of Almighty God, and the utter ſubverſion of the common Law.* 4. *Inſt.*

Theſe, I think, make out what I alledged, and are flagrant Inſtances of the Influence of Men in Power, even upon the Repreſentatives of a whole Kingdom. From all which I hope it will be agreed, that it is a Duty which all good Men owe to their Country, to guard againſt the unhappy Influence of ill Men when intruſted with Power; and eſpecially againſt their Creatures and Dependants, who, as they are generally more neceſſitous, are ſurely more covetous and cruel. But it is worthy of Obſervation, that tho' the Spirit of Liberty was borne down and oppreſſed in *England* at that Time, yet it was not loſt; for the Parliament laid hold of the firſt Opportunity to free the Subject from the many inſufferable Oppreſſions and Outrages committed upon their Perſons and Eſtates by Colour of theſe Acts, the laſt of which being deemed the moſt grievous, was repealed in the firſt Year of *Hen. 8th.* Tho' it is to be obſerved, that *Hen. 7th.* and his Creatures reap'd ſuch great Advantages by the grievous Oppreſſions and Exactions, *grinding the Faces of the poor Subjects*, as my Lord *Coke* ſays, by Colour of this Statute by information only, that a Repeal of

this Act could never be obtained during the Life of that Prince. The other Statute being the favourite Law for Supporting arbitrary Power, was continued much longer. The Execution of it was by the great Men of the Realm; and how they executed it, the Senſe of the Kingdom, expreſſed in the 17*th* of *Charles* 1*ſt*. (by which the Court of Star-chamber, the ſoil where Informations grew rankeſt) will beſt declare. In that Statute *Magna Charta*, and the other Statutes made in the Time of *Edw*. 3*d*. which, I think, are no leſs than five, are particularly enumerated as Acts, by which the Liberties and Privileges of the People of *England* were ſecured to them, againſt ſuch oppreſſive Courts as the Star Chamber and others of the like Juriſdiction. And the Reaſon aſſigned for their pulling down the Star Chamber, is *That the Proceedings, Cenſures and Decrees of the Court of Star Chamber, even tho' the great Men of the Realm, nay and a Biſhop too* (holy Man) *were Judges, had by Experience been found to be an intolerable Burthen to the Subject, and the Means to introduce an arbitrary Power and Government.* And therefore that Court was taken away, with all the other Courts in that Statute mentioned, having like Juriſdiction.

I don't mention this Statute, as if by the taking away the Court of Star Chamber, the Remedy for many of the Abuſes or Offences cenſured there, was likewiſe taken away; no, I only intend by it to ſhew, that the People of *England* ſaw clearly the Danger of truſting their Liberties and Properties to be tried, even by the greateſt Men in the Kingdom, without the Judgment of a Jury of their Equals. They had felt the terrible effects of leaving it to the Judgment of theſe great Men to ſay what was *ſcandalous and ſeditious, falſe or ironical.* And if the Parliament of *England* thought this Power of judging was too great to be truſted with Men of the firſt Rank in the Kingdom, without the Aid of a Jury, how ſacred ſoever their Characters might be, and therefore reſtored to the People their original Right of tryal by Juries, I hope to be excuſed for inſiſting, that by the Judgment of a Parliament, from whence an Appeal

lies, the Jury are the proper Judges, of what is *falſe* at leaſt, if not, of what is *ſcandalous and ſeditious*. This is an Authority not to be denied, it is as plain as it is great, and to ſay, that this Act indeed did reſtore to the People Tryals by Juries, which was not the Practice of the Star Chamber, but that did not give the Jurors any new Authority, or any Right to try Matters of Law, I ſay this Objection will not avail; for I muſt inſiſt, that where Matter of Law is complicated with Matter of Fact, the Jury have a Right to determine both. As for Inſtance; upon Indictment for Murder, the Jury may, and almoſt conſtantly do, take upon them to Judge whether the Evidence will amount to Murder or Manslaughter, and find accordingly; and I muſt ſay I cannot ſee, why in our Caſe the Jury have not at leaſt as good a Right to ſay, whether our News Papers are a Libel or no Libel as another Jury has to ſay, whether killing of a Man is Murder or Manslaughter. The Right of the Jury, to find ſuch a Verdict as they in their Conſcience do think is agreeable to their Evidence, is ſupported by the Authority of *Buſhel's* Caſe, in *Vaughan's Reports*, *pag.* 135. beyond any Doubt. For, in the Argument of that Caſe, the Chief Juſtice who delivered the Opinion of the Court, lays it down for Law, *That in all General Iſſues, as upon* Non Cul. *in* Treſpaſs, Non Tort. Nul Diſſeizin *in Aſſize*, &c. *tho' it is Matter of Law, whether the Defendant is a Treſpaſſer, a Diſſeizer*, &c. *in the particular Caſes in Iſſue, yet the Jury find not* (*as in a ſpecial Verdict*) *the fact of every Caſe, leaving the Law to the Court; but find for the Plaintiff or Defendant upon the Iſſue to be tried, wherein they reſolve both Law and Fact complicately.* It appears by the ſame Caſe, that tho' the diſcreet and lawful Aſſiſtance of the Judge, by Way of Advice, to the Jury, may be uſeful; yet that Advice or Direction ought always to be *upon Suppoſition, and not poſitive, and upon Coerſion.* The Reaſon given in the ſame Book is *becauſe the Judge* (*as Judge*) *cannot know what the Evidence is which the Jury have*, that is, *he can only know the*

Vaughan's Rep p. 150.

pag. 144.

pag. 147.

Evidence given in Court: but the Evidence which the Jury have, may be of their own Knowledge, as they are returned of the Neighbourhood. They may alſo know from their own Knowledge, that what is ſworn in Court is not true; and they may know the Witneſſes to be ſtigmatized, to which the Court may be ſtrangers. But what is to my Purpoſe, is, that ſuppoſe the Court did really know all the Evidence which the Jury know, yet in that Caſe it is agreed, *That the Judge and Jury may differ in the Reſult of their Evidence as well as two Judges may*, which often happens. And in *pag.* 148. the Judge ſubjoins the Reaſon, why it is no Crime for a Jury to differ in Opinion from the Court, where he ſays, *That a Man cannot ſee with another's Eye, nor hear by another's Ear; no more can a Man conclude or infer the Thing by anothers Underſtanding or Reaſoning.* From all which (I inſiſt) it is very plain, *That the Jury are by Law at Liberty (without any affront to the Judgment of the Court) to find both the Law and the Fact, in our Caſe*, as they did in the caſe I am ſpeaking to, which I will beg Leave juſt to mention, and it was this. Mr. *Penn* and *Mead* being Quakers, and having met in a peaceable Manner, after being ſhut out of their Meeting Houſe, preached in *Grace Church Street* in *London*, to the People of their own Perſwaſion, and for this they were indicted; and it was ſaid, *That they with other Perſons, to the Number of* 300, *unlawfully and tumultuouſly aſſembled, to the Diſturbance of the Peace, &c.* To which they pleaded, *Not Guilty.* And the Petit Jury being ſworn to try the iſſue between the King and the Priſoners, that is, whether they were Guilty, according to the Form of the Indictment? Here there was no Diſpute but they were aſſembled together, to the Number mentioned in the Indictment; But *whether that Meeting together was riotouſly, tumultuouſly, and to the Diſturbance of the Peace?* was the queſtion. And the Court told the Jury it was, and ordered the Jury to find it ſo; *For* (ſaid the Court) *the Meeting was the Matter of Fact, and that is confeſſed, and we tell you it is unlawful, for it is againſt the Statute; and the Meeting being unlawful, it follows of Courſe that it was tumul-*

tuous, and to the Diſturbance of the Peace. But the Jury did not think fit to take the Court's Word for it, for they could neither find *Riot*, *Tumult*, or any Thing tending to the *Breach of the Peace* committed at that Meeting; and they acquitted Mr. *Penn* and *Mead*. In doing of which they took upon them to judge both the *Law* and the *Fact*, at which the the Court (being themſelves true Courtiers) were ſo much offended, that they fined the Jury 40 Marks a piece, and committed them till paid. But Mr. *Buſhel*, who valued the Right of a Juryman and the Liberty of his Country more than his own, refuſed to pay the Fine, and was reſolved (tho' at great Expence and trouble too) to bring, and did bring, his *Habeas Corpus*, to be relieved from his Fine and Impriſonment, and he was releaſed accordingly; and this being the Judgment in his Caſe, it is eſtabliſhed for Law, *That the Judges, how great ſoever they be, have no Right to fine impriſon or puniſh a Jury, for not finding a Verdict according to the Direction of the Court.* And this I hope is ſufficient to prove, That Jurymen are to ſee with their own Eyes, to hear with their own Ears, and to make uſe of their own Conſciences and Underſtandings, in judging of the Lives, Liberties or Eſtates of their fellow Subjects. And ſo I have done with this Point.

This is the ſecond informotion for Libelling of a Governour, that I have known in *America*. And the firſt, tho' it may look like a Romance, yet as it is true, I will beg Leave to mention it. Governour *Nicholſon*, who happened to be offended with one [of]* his Clergy, met him one Day upon the Road, and as was uſual with him (under the Protection of his Commiſſion) uſed the poor Parſon with the worſt of Language, threatned to cut off his Ears, ſlit his Noſe, and at laſt to ſhoot him through the Head. The Parſon being a reverend Man, continued all this Time uncovered in the Heat of the Sun, until he found an Opportunity to fly for it; and coming to a Neighbours Houſe felt himſelf very ill of a

* The word "of" is missing in the original edition, but supplied in manuscript by a contemporary hand.

Feaver, and immediately writes for a Doctor; and that his Phyſician might the better judge of his Diſtemper, he acquainted him with the Uſage he had received; concluding, that the Governour was certainly mad, for that no Man in his Senſes would have behaved in that manner. The Doctor unhappily ſhews the Parſons Letter; the Governour came to hear of it; and ſo an Information was prefered againſt the poor Man for ſaying *he believed the Governour was mad*; and it was laid in the Information to be *falſe, ſcandalous* and *wicked, and wrote with Intent to move Sedition among the People, and bring His Excellency into Contempt.* But by an Order from the late Queen *Anne*, there was a Stop put to that Proſecution, with ſundry others ſet on foot by the ſame Governour, againſt Gentlemen of the greateſt Worth and Honour in that Government.

And may not I be allowed, after all this, to ſay, That by a little Countenance, almoſt any Thing which a Man writes, may with the Help of that uſeful Term of Art, called an *Innuendo*, be conſtrued to be a Libel, according to Mr. Attorney's Definition of it, That *whether the Words are ſpoke of a Perſon of a publick Character, or of a private Man, whether dead or Living, good or bad, true or falſe* all make a Libel; for according to Mr. Attorney, *after a Man hears a Writing read, or reads and repeats it, or laughs at it, they are all puniſhable.* It is true, Mr. Attorney is ſo good as to allow, *after the Party knows it to be a Libel*, but he is not ſo kind as to take the Man's Word for it.

Here were ſeveral Caſes put to ſhew, That tho' what a Man writes of a Governour was true, proper and neceſſary, yet according to the foregoing Doctrine it might be conſtrued to be a Libel: But Mr. *Hamilton* after the Tryal was over, being informed, That ſome of the Caſes he had put, had really happened in this Government, he declared he had never heard of any ſuch; and as he meant no perſonal Reflections, he was ſorry he had mentioned them, and therefore they are omitted here.

Mr. *Hamilton.* If a Libel is underſtood in the large and unlimited Senſe urged by Mr. Attorney, there is ſcarce a Writing I know that may not be called a Libel, or ſcarce

any Perſon ſafe from being called to an Account as a Libeller: For *Moſes*, meek as he was, libelled *Cain*; and who is it that has not libelled the Devil? For according to Mr. Attorney it is no Juſtification to ſay one has a bad Name. *Echard* has libelled our good King *William*: *Burnet* has libelled among many others King *Charles* and King *James*; and *Rapin* has libelled them all. How muſt a Man ſpeak or write, or what muſt he hear, read or ſing? Or when muſt he laugh, ſo as be ſecure from being taken up as a Libeller? I ſincerely believe, that were ſome Perſons to go thro' the Streets of *New-York* now-a-days, and read a Part of the Bible, if it was not known to be ſuch, Mr. Attorney, with the help of his *Innuendo's*, would eaſily turn it into a Libel. As for inſtance, *If.* IX. 16. *The Leaders of the People cauſe them to err, and they that are led by them are deſtroyed.* But ſhould Mr. Attorney go about to make this a Libel, he would read it thus; *The Leaders of the People* [*innuendo*, the Governour and Council of *New-York*] *cauſe them* [*innuendo*, the People of this Province] *to err, and they* [the People of this Province meaning] *that are led by them* [the Governour and Council meaning] *are deſtroyed* [*innuendo*, are deceived into the Loſs of their Liberty] which is the worſt Kind of Deſtruction. Or if ſome Perſons ſhould publickly repeat, in a Manner not pleaſing to his Betters, the 10*th* and 11*th* Verſes of the LVI. *Chap.* of the ſame Book, there Mr. Attorney would have a large Field to diſplay his Skill, in the artful Application of his *Innuendo's*. The Words are, *His Watchmen are all blind, they are ignorant, &c. Yea, they are greedy dogs, that can never have enough.* But to make them a Libel, there is according to Mr. Attorney's Doctrine, no more wanting but the Aid of his Skill, in the right adapting his *Innuendo's*. As for Inſtance; *His Watchmen* [*innuendo*, the Governour's Council and Aſſembly] *are* [all]* *blind, they are ignorant* [*innuendo*, will not ſee the dangerous Deſigns of His Excellency] *Yea, they* [the Governour and Council mean-

* This word is supplied in the original in manuscript by a contemporary hand.

ing] *are greedy Dogs, which can never have enough* [*innuendo*, enough of Riches and Power.] Such an Inſtance as this is ſeems only only fit to be laugh'd at; but I may appeal to Mr. Attorney himſelf, whether theſe are not at leaſt equally proper to be applied to His Excellency and His Miniſters, as ſome of the Inferences and *Innuendo's* in his Information againſt my Client. Then if Mr. Attorney is at Liberty to come into Court, and file an Information in the King's Name, without Leave, who is ſecure, whom he is pleaſed to proſecute as a Libeller? And as the Crown Law is contended for in bad Times, there is no Remedy for the greatest Oppreſſion of this Sort, even tho the Party proſecuted is acquitted with Honour. And give me Leave to ſay, as great Men as any in *Britain*, have boldly aſſerted, That the Mode of Proſecuting by Information (when a Grand Jury will not find *Billa vera*) is a national Grievance, and greatly inconſiſtent with that Freedom, which the Subjects of *England* enjoy in moſt other Caſes. But if we are ſo unhappy as not to be able to ward off this Stroke of Power directly, yet let us take Care not to be cheated out of our Liberties, by Forms and Appearances; let us always be ſure that the Charge in the Information is made out clearly even beyond a Doubt; for tho Matters in the Information may be called *Form* upon Tryal, yet they may be, and often have been found to be *Matters of Subſtance* upon giving Judgment.

Gentlemen; The Danger is great, in Proportion to the Miſchief that may happen, through our too great Credulity. A proper Confidence in a Court, is commendable; but as the Verdict (what ever it is) will be yours, you ought to refer no Part of your Duty to the Diſcretion of other Perſons. If you ſhould be of the Opinion, that there is no Falſhood in Mr. *Zenger's* Papers, you will, nay (pardon me for the Expreſſion) you ought to ſay ſo; becauſe you don't know whether others (I mean the Court) may be of that Opinion. It is your Right to do ſo, and there is much depending upon your Reſolution, as well as upon your Integrity.

The loſs of liberty to a generous Mind, is worſe than

Death; and yet we know there have been thoſe in all Ages, who for the ſake of Preferment, or ſome imaginary Honour, have freely lent a helping Hand, to oppreſs, nay to deſtroy their Country. This brings to my Mind that ſaying of the immortal *Brutus*, when he look'd upon the Creatures of *Cæſar*, who were very great Men, but by no Means good Men. "*You* Romans *ſaid* Brutus, *if yet I may call you ſo*, "*conſider what you are doing; remember that you are aſſiſting* "*Cæſar to forge thoſe very Chains, which one day he will make* "*your ſelves wear.*" This is what every Man (that values Freedom) ought to conſider: He ſhould act by Judgment and not by Affection or Self-Intereſt; for, where thoſe prevail, No Ties of either Country or Kindred are regarded; as upon the other Hand, the Man, who loves his Country, prefers it's Liberty to all other Conſiderations, well knowing that without Liberty, Life is a Miſery.

A famous Inſtance of this you will find in the Hiſtory of another brave *Roman* of the ſame Name, I mean *Lucius Junius Brutus*, whoſe ſtory is well known and therefore I ſhall mention no more of it, than only to ſhew the Value he put upon the Freedom of his Country. After this great Man, with his Fellow Citizens whom he had engag'd in the Cauſe, had baniſh'd *Tarquin* the Proud, the laſt King of *Rome*, from a Throne which he aſcended by inhuman Murders and poſſeſs'd by the moſt dreadful Tyranny and Proſcriptions, and had by this Means, amaſs'd incredible Riches, even ſufficient to bribe to his Intereſt, many of the young Nobility of *Rome*, to aſſiſt him in recovering the Crown; but the Plot being diſcovered, the principal Conſpirators were apprehended, among whom were two of the Sons of *Junius Brutus*. It was abſolutely neceſſary that ſome ſhould be made Examples of, to deter others from attempting the reſtoring of *Tarquin* and deſtroying the Liberty of *Rome*. And to effect this it was, that *Lucius Junius Brutus*, one of the Conſuls of *Rome*, in the Preſence of the *Roman* People, ſat Judge and condemned his own Sons, as Traitors to their Country: And to give the laſt Proof of his exalted Virtue, and his

Love of Liberty: He with a Firmneſs of Mind, (only becoming ſo great a Man) caus'd their Heads to be ſtruck off in his own Preſence; and when he obſerv'd that his rigid Virtue, occaſion'd a ſort of Horror among the People, it is obſerv'd he only ſaid. "*My Fellow-Citizens, do not think that* "*this Proceeds from any Want of natural Affection*: *No, The* "*Death of the Sons of* Brutus *can affect* Brutus *only*; *but the* "*Loſs of Liberty will affect my Country.*" Thus highly was Liberty eſteem'd in thoſe Days that a Father could ſacrifice his Sons to ſave his Country, But why do I go to Heathen *Rome*, to bring Inſtances of the Love of Liberty, the beſt Blood in *Britain* has been ſhed in the Cauſe of Liberty; and the Freedom we enjoy at this Day, may be ſaid to be (in a great Meaſure) owing to the glorious Stand the famous *Hamden*, and other of our Countrymen, made againſt the arbitrary Demands, and illegal Impoſitions, of the Times in which they lived; who rather than give up the Rights of *Engliſhmen*, and ſubmit to pay an illegal Tax, of no more, I think, than 3 shillings, reſolv'd to undergo, and for their Liberty of their Country did undergo the greateſt Extremities, in that arbitrary and terrible Court of Star Chamber, to whoſe arbitrary Proceedings, (it being compos'd of the principal Men of the Realm, and calculated to ſupport arbitrary Government) no Bounds or Limits could be ſet, nor could any other Hand remove the Evil but a Parliament.

Power may juſtly be compar'd to a great River, while kept within it's due Bounds, is both Beautiful and Uſeful; but when it overflows, it's Banks, it is then too impetuous to be ſtemm'd, it bears down all before it, and brings Deſtruction and Deſolation wherever it comes. If then this is the Nature of Power, let us at leaſt do our Duty, and like wiſe Men (who value Freedom) uſe our utmoſt Care to ſupport Liberty, the only Bulwark againſt lawleſs Power, which in all Ages has ſacrificed to it's wild Luſt and boundleſs Ambition, the Blood of the beſt Men that ever liv'd.

I hope to be pardon'd Sir for my Zeal upon this Occaſion; it is an old and wiſe Caution. *That when our Neigh-*

bours Houſe is on Fire, we ought to take Care of our own. For tho' Bleſſed be God, I live in a Government where Liberty is well underſtood, and freely enjoy'd: yet Experience has ſhewn us all (I'm ſure it has to me) that a bad Precedent in one Government, is ſoon ſet up for an Authority in another; and therefore I cannot but think it mine, and every Honeſt Man's Duty, that (while we pay all due Obedience to Men in Authority) we ought at the ſame Time to be upon our Guard againſt Power, wherever we apprehend that it may affect ourſelves or our Fellow-Subjects.

I am truly very unequal to ſuch an Undertaking on many Accounts. And you ſee I labour under the Weight of many Years, and am born down with great Infirmities of Body; yet Old and Weak as I am, I ſhould think it my Duty if required, to go to the utmoſt Part of the Land, where my Service cou'd be of any Uſe in aſſiſting to quench the Flame of Proſecutions upon Informations, ſet on Foot by the Government, to deprive a People of the Right of Remonſtrating, (and complaining too) of the arbitrary Attempts of Men in Power. Men who injure and oppreſs the People under their Adminiſtration provoke them to cry out and complain; and then make that very Complaint the Foundation for new Oppreſſions and Proſecutions. I wiſh I could ſay there were no Inſtances of this Kind. But to conclude; the Queſtion before the Court and you Gentlemen of the Jury, is not of ſmall nor private Concern, it is not the Cauſe of the poor Printer, nor of *New-York* alone, which you are now trying: No! It may in it's Conſequence, affect every Freeman that lives under a Britiſh Government on the main of *America.* It is the beſt Cauſe. It is the Cauſe of Liberty; and I make no Doubt but your upright Conduct, this Day, will not only entitle you to the Love and Eſteem of your Fellow-Citizens; but every Man who prefers Freedom to a Life of ſlavery will bleſs and honour You, as Men who have baffled the Attempt of Tyranny; and by an impartial and uncorrupt Verdict, have laid a noble Foundation for ſecuring to ourſelves, our Poſ-

terity, and our Neighbours, That, to which Nature and the Laws of our Country have given us a Right,- - the Liberty - - - - both of expoſing and oppoſing arbitrary Power (in theſe Parts of the World, at leaſt) by ſpeaking and writing Truth.

Here Mr. Attorney obſerv'd, that Mr. Hamilton *had gone very much out of the Way, and had made himſelf and the People very merry: But that he had been citing Caſes, not at all to the Purpoſe; he ſaid, there was no ſuch Cauſe as Mr.* Buſhel's *or Sir* Edward Hales *before the Court; and he could not find out what the Court or Jury had to do with Diſpenſations, Riots or unlawful Aſſemblies: All that the Jury had to conſider of was Mrs.* Zenger's *Printing and Publiſhing two ſcandalous Libels, which very highly reflected on his Excellency and the principal Men concern'd in the Adminiſtration of this Government, which is confeſs'd. That is, the Printing and Publiſhing of the Journals ſet forth in the Information is confeſs'd. And concluded that as Mr.* Hamilton *had confeſs'd the Printing, and there could be no doubt but they were ſcandalous Papers, highly reflecting upon his Excellency, and the principal Magiſtrates in the Province. And therefore he made no Doubt but the Jury would find the Defendant Guilty, and would refer to the Court for their Direction.*

Mr. Ch. Juſt. Gentlemen of the Jury. The great Pains Mr. *Hamilton* has taken, to ſhew how little Regard Juries are to Pay to the Opinion of the Judges; and his inſiſting ſo much upon the Conduct of ſome Judges in Tryals of this kind; is done no doubt, with a Deſign that you ſhould take but very little Notice, of what I might ſay upon this Occaſion. I ſhall therefore only obſerve to you that, as the Facts or Words in the Information are confeſſed: The only Thing that can come in Queſtion before you is, whether the Words as ſet forth in the Information make a Lybel. And that is a Matter of Law, no Doubt, and which you may leave to the Court. But I ſhall trouble you no further with any Thing

more of my own, but read to you the Words of a learned and upright Judge * in a caſe of the like Nature.

'To ſay that corrupt Officers are appointed to adminiſter Af-'fairs, is certainly a Reflection on the Government. If People 'ſhould not be called to account for poſſeſſing the People with an 'ill Opinion of the Government, no Government can ſubſiſt, For 'it is very neceſſary for all Governments that the People ſhould 'have a good Opinion of it. And nothing can be worſe to any 'Government, than to endeavour to procure Animoſities; as to the 'Management of it, this has been always look'd upon as a Crime, 'and no Government can be ſafe without it be puniſhed.

'Now you are to conſider, whether theſe Words I have read 'to you, do not tend to beget an ill Opinion of the Adminiſtra-'tion of the Government? To tell us, that thoſe that are em-'ployed know nothing of the Matter, and thoſe that do know 'are not employed. Men are not adapted to Offices, but Offices, to 'Men, out of a particular Regard to their Intereſt, and not to 'their Fitneſs for the Places; this is the Purport of theſe 'Papers.

Mr. *Hamilton.* I humbly beg Your Honours Pardon: I am very much misapprehended, if you ſuppoſe what I ſaid was ſo deſigned.

Sir, you know; I made an Apology for the Freedom I found my ſelf under a Neceſſity of uſing upon this Occaſion. I ſaid, there was Nothing perſonal deſigned; it aroſe from the Nature of our Defence.

The Jury withdrew and in a ſmall Time returned and being aſked by the Clerk whether they were agreed of their Verdict, and whether *John Peter Zenger* was guilty of Printing and Publiſhing the Libels in the Information mentioned? They anſwered by *Thomas Hunt*, their Foreman, *Not Guilty*, Upon which there were three Huzzas in the Hall, which was crowded with People and the next Day I was diſcharged from my Impriſonment.

* Ch. J. *Holt* in *Tutchin's* Caſe.

APPENDIX.

City of *New-York* } *ſs.* AT a Common Council, held at the City-Hall of the ſaid City, on *Tueſday* the Sixteenth Day of *September*, Anno Dom. 1735.

PRESENT.

Paul Richards Eſq; Mayor.
Gerardus Stuyveſant Eſq; Deputy-Mayor.
Daniel Horſmanden, Eſq; Recorder.

ALDERMEN.

William Roome Eſq; *John Walter* Eſq; *Stephen Bayard* Eſq; *Simon Johnſon* Eſq; *Chriſtopher Fell* Eſq; *Johannes Burger* Eſq;

ASSISTANTS.

Mr. *Johannes Waldron*. Mr. *John Moore*. Mr. *Charles LeRoux*.
Mr. *Ede Myer*. Mr. *John Fred. Evert Byvanck*.

Ordered, *That* Andrew Hamilton, *Eſq; of* Philadelphia, *Barriſter at Law, be preſented with the Freedom of this Corporation; and that Alderman* Bayard, *Alderman* Johnſon, *and Alderman* Fell, *be a Committee to bring in a Draught thereof*,

City of *New-York*. } *ſs.* AT a Common-Council, held at the City-Hall of the ſaid City on *Monday* the twenty Ninth Day of *September*, being the Feaſt Day of St. *Michael* the Archangel *Anno Dom.* 1735.

PRESENT.

Paul Richards Eſq; Mayor.
Daniel Horſmanden, Eſq; Recorder.

ALDERMEN.

William Roome, Eſq; *John Walter* Eſq; *Stephen Bayard*, Eſq; *Simon Johnſon*, Eſq; *Chriſtopher Fell*, Eſq; *Johannes Burger* Eſq;

ASSISTANTS.

Mr. *Johannes Waldron.* Mr. *Charles LeRoux.* Mr. *Henry Bogart.*
Mr. *John Fred.* Mr. *Evert Byvank.*

Stephen Bayard Simon Johnſon *and* Chriſtopher Fell, Eſqrs. *Alderman, to whom it was referred to prepare the Draught of the Freedom of this Corporation, to be preſented to* Andrew Hamilton *Eſq; make their Report thereon, in the Words following* (to wit) *That they have prepared the Form of the Grant, to the ſaid* Andrew Hamilton, *Eſq; of the Freedom of the City of* New-York, *in theſe words* (to wit).

City of *New-York.* } *ſs.* *PAUL RICHARDS* Eſq; the Recorder Aldermen and Aſſiſtants of the City of *New-York*, convened in Common-Council, To all whom theſe Preſents ſhall come Greeting. *WHEREAS*, Honour is the Juſt Reward of Virtue, and publick Benefits demand a publick Acknowledgment. We therefore, under a grateful Senſe of the remarkable Service, done to the Inhabitants of this City and Colony, by *Andrew Hamilton*, Eſq; of *Pennſilvania*, Barriſter at Law, by his Learned and generous Defence of the Rights of Mankind, and the Liberty of the Preſs, in the Caſe of *John Peter Zenger*, lately tried on an Information exhibited in the Supream-Court of this Colony, do by theſe Preſents, bear to the ſaid *Andrew Hamilton* Eſq; the publick Thanks of the Freemen of this Corporation for that ſignal Service, which he Chearfully undertook under great Indiſpoſition of Body, and generouſly performed, refuſing any Fee or Reward: And in Teſtimony of our great Eeem* for his Perſon, and Senſe of his Merit, do hereby preſent him with the Freedom of this Corporation. Theſe are therefore to Certify and Declare, that the ſaid *Andrew*

*So printed in the original for "Eſteem."

Hamilton Eſq ; is hereby admitted, received and allowed a Freedom* and Citizen of the ſaid City: To Have, Hold, Enjoy and Partake of all the Benefits Liberties, Priviledges, Freedoms and Immunities whatſoever granted or belonging to a Freeman and Citizen of the ſame City. *In Teſtimony*, whereof the Common Council of the ſaid City, in Common Council aſſembled, have cauſed the Seal of the ſaid City to be hereunto affixed this Twenty Ninth Day of *September. Anno Domini One Thousand Seven Hundred and Thirty Five.*

By Order of the Common Council
William Sharpas. Clerk

And we do further Report, that ſundry of the Members of this Corporation and Gentlemen of this City have voluntarily Contributed ſufficent for a Gold Box of five Ounces, aud a half for Incloſing the Seal of the ſaid Freedom ; Upon the Lid of which, we are of Opinion ſhould be engraved the Arms of the City of New-York : *Witneſs Our Hands this Twenty Ninth day of* September, 1735.

Stephen Bayard·
Simon Johnſon.
Chriſtopher Fell.

Which Report is approved by this Court, and Ordered, *That the Freedom and Box be forthwith made, purſuant to the ſaid Report, and that Mr.* Sharpas, *the Common Clerk of this City, do affix the Seal to the ſame Freedom, and incloſe it in the ſaid Box.*

Mr. Alderman *Bayard going to* Philadelphia *and offering to be the Bearer of the ſaid Freedom to Mr.* Hamilton, Ordered, *That Mr.* Sharpas, *deliver it to Alderman* Bayard *for that Purpoſe ; and that Alderman* Bayard *do deliver it to Mr.* Hamilton, *with Aſſurances of the great Eſteem, that this Corporation have for his Perſon and Merit.*

* So given in the original for "Freeman."

City of *New-York* } ss. At a Common-Council, held at the City-Hall of the ſaid City, on *Wedneſday* the fifteenth Day of *October*, Anno Domini 1735.

PRESENT.

Paul Richards, Eſq; Mayor.
Daniel Horſemanden, Eſq; Recorder.

ALDERMEN.

John Walter, Eſq; *William Roome*, Eſq;
Simon Johnſon, Eſq; *Johannes Burger*, Eſq;

ASSISTANTS.

Mr. *Johannes Waldron*, Mr. *Gerrardus Beekman*, Mr. *Henry* Mr. *Abraham de Peyſter*, Mr. *Peter Stoutenburgh*. *Bogart*.

Ordered, *That the Freedom, granted by this Corporation, to* Andrew Hamilton, *Eſq; with the Report of the Committee, for preparing a Draught of the ſame and the Order of this Court, thereon, may be printed.*

William Sharpas.

Round on the Lid of the Box mentioned in the above ſaid Report and Order, there is engraved not only the Arms of the City of *New-York*, but alſo this Motto in a Garter;

DEMERSÆ LEGES-TIMEFACTA LIBERTAS-HÆC TANDEM EMERGUNT.

On the inner Side of the Lid of the Box ſhewing it ſelf at the ſame Time with the Certificate of the Freedom; There is Engraven in a flying Garter, theſe Words.

NON NUMMIS,—VIRTUTE PARATUR.

As an Incentive to publick Virtue, on the Front of the Rim of the ſaid Box, there is Engraven a Part of *Tully's* Wiſh;

ITA CUIQUE EVENIAT, UT DE REPUBLICA MERUIT.

Which Freedom and Box was preſented in the Manner that had been directed, and gratefully accepted by the ſaid *Andrew Hamilton*, Eſq;

ERRATA.

Pag. 12 Lin. 8. *for* Who *read* tho'. The same Page, Lin. 9. for *Freeholders* read *Freehold.* The same Page, Lin. 11. *for* be out *read* be left out. Pag. 13. Lin. *penult. for* said the *read* the said.

New-York, Printed and sold by *John Peter Zenger.* MDCCXXXVI.

A BIBLIOGRAPHY
OF THE
TRIAL
OF
JOHN PETER ZENGER

BIBLIOGRAPHY

OF THE TRIAL OF JOHN PETER ZENGER

1736

THREE rows of printer's ornaments. A brief Narrative of the Case and Try-/al of *John Peter Zenger*, Printer of the/*New-York weekly Journal.*/[One row of ornaments.]

[Colophon:] New-York, Printed and sold by *John Peter Zenger*, MDCCXXXVI./

Folio, 20 leaves.

Collation: No separate title-page. Text, pages 1 to [40], 15–40 being wrongly numbered 17–42.

This is the first edition of the "Trial."

1737

[Two rows of printer's ornaments.]/REMARKS/ON/*Zenger's* TRYAL,/Taken out of the *Barbados* Gazette's./For the Benefit of the Students in/*Law*, and others in *North America.*/[1737.]

12mo, 36 leaves.

Collation: No separate title-page. Above heading at top of page 1. Letter, signed "Anglo Americanus," dated "Bridge-Town, June 24, 1737," pages 1–5; text, with heading, "From the Barbados Gazette, N° 439 | Remarks on Zenger's Trial," pages 6–39; letter, beginning "Mr. Keimer,"—signed "Anglo Americanus," dated "Bridge-Town, | July 20, | 1737," page 40; part 2, with heading, "Remarks | on | Zenger's Tryal, | Taken out of the Barbados Gazette, | N° 446, &c | Part II." signed "Indus Britannicus." dated "Bridge-Town, | July 29, 1737." pages [41]–71; blank page [72].

Nos. 466, 467, 468 and 469 of the *Pennsylvania Gazette* contain a reply to this written by James Alexander.

JOHN PETER ZENGER

1738

[Two rows of printer's ornaments.]/A brief NARRATIVE of the Case/and Tryal of *John Peter Zenger*, Printer/of the *New-York weekly Journal.*/

[Colophon :] BOSTON :/Printed and Sold by THOMAS FLEET, at the *Heart* and *Crown* in/Cornhill, 1738./

4to, 24 leaves.

Collation : No separate title-page; text and Appendix, pages 1–48.

THE/TRYAL/OF/*John Peter Zenger*,/OF/NEW-YORK, PRINTER,/Who was lately Try'd and Acquitted for PRINTING and/PUBLISHING a LIBEL against the Government./ With the PLEADINGS and ARGUMENTS on both Sides./*Ita* CUIQUE *eveniat*, *ut de* REPUBLICA *meruit.* (Cicero.)/[Printer's ornament.]/*London :* Printed for J. WILFORD, behind the Chapter-House, *St.* Paul's/Church-Yard. 1738./

4to, 17 leaves.

Collation : Title, 1 page ; blank, 1 page; text and Appendix, pages 1–32.

THE/TRYAL/OF/*John Peter Zenger*,/OF/NEW-YORK, PRINTER,/Who was lately Try'd and Acquitted for PRINTING and/PUBLISHING a LIBEL against the Government./ With the PLEADINGS and ARGUMENTS on both Sides./*Ita* CUIQUE *eveniat*, *ut de* REPUBLICA *meruit.* (Cicero) / THE SECOND EDITION./[Printer's ornament.] *London :* Printed for J. WILFORD, behind the Chapter-House, St. *Paul's*/Church-Yard, 1738./

4to, 17 leaves.

Collation : Title, 1 page; blank, 1 page; text and Appendix, pages 1–32,

THE/TRYAL/OF/*John Peter Zenger*,/OF/NEW-YORK, PRINTER,/Who was lately Try'd and Acquitted for PRINTING and/PUBLISHING a LIBEL against the Government./With the PLEADINGS and ARGUMENTS on both Sides./*Ita* CUIQUE *eveniat*, *ut de* REPUBLICA *meruit.* (Cicero)/The THIRD EDITION./[Printer's ornament.]/*London;* Printed for J.WILFORD, behind the Chapter-House, St. *Paul's*/Church-Yard, 1738./

4to, 17 leaves.

Collation: Title, 1 page; blank, 1 page; text and Appendix, pages 1–32.

THE/TRYAL/OF/*John Peter Zenger*,/OF/NEW-YORK, PRINTER,/Who was lately Try'd and Acquitted for PRINTING and/PUBLISHING a LIBEL against the Government./With the PLEADINGS and ARGUMENTS on both Sides./*Ita* CUIQUE *eveniat, ut de* REPUBLICA *meruit.* (Cicero)/The FOURTH EDITION./.[Printer's Ornament.]/*London:* Printed for J. WILFORD, behind the Chapter-House, St. *Paul's*/Church-Yard, 1738./

4to, 17 leaves.

Collation: Title, 1 page; blank, 1 page; text and Appendix, pages 1–32.

REMARKS/ ON THE/ TRIAL/ OF/ John-Peter Zenger,/ PRINTER of the/NEW-YORK Weekly Journal,/Who was lately Try'd and Acquitted for/Printing and Publishing TWO LIBELS/Against the/Government of that PROVINCE./LONDON: /Printed for J. ROBERTS in *Warwick-Lane.* MDCCXXXVIII./(Price One Shilling)/

4to, 16 leaves.

Collation: Title 1 page; blank, 1 page; Preface, 2 pages; text, signed at end "Indus Britannicus," pages [1]–27; blank, page [28].

[Two rows of printer's ornaments.]/A BRIEF/NARRATIVE /OF THE/CASE *and* TRIAL *of* JOHN PETER ZENGER,/ *Printer of the* NEW-YORK *Weekly Journal.*/

4to, 16 leaves.

Collation: No separate title-page. Text and Appendix, pages 1–32.
This edition of the trial is apparently an English one; it strongly resembles Wilford's editions, but is as yet unidentified.

1750

THE/CASE and TRYAL/OF/JOHN PETER ZENGER,/ OF/NEW-YORK,/PRINTER,/Who was lately tryed and acquitted for PRINT-/ING and PUBLISHING a LIBEL against the/GOVERNMENT./WITH/The PLEADINGS and ARGUMENTS on both Sides./*Ita* CUIQUE *eveniat, ut de* REPUBLICA *meruit.* CICERO./LONDON:/Printed for J. WILFORD, behind the Chapter-House, St./*Paul's* Church-Yard, 1750./[Price a *British* Sixpence.]/

8vo, 30 leaves.

Collation: Title, page [1]; blank, page [2]; text and Appendix, pages 3–60.

JOHN PETER ZENGER

1752

THE/TRIAL/OF/*John Peter Zenger*,/OF/NEW-YORK, PRINTER;/Who was Tried and Acquitted,/For PRINTING and PUBLISHING a LIBEL/against the Government./WITH/The PLEADINGS and ARGUMENTS on both Sides./*Ita* CUIQUE *eveniat, ut de* REPUBLICA *meruit.* Cic./[Printer's ornament.]/LONDON:/Printed for P. BROWN, in *Fleet-Street.* MDCCLII./(Price One Shilling and Sixpence.)/

8vo, 40 leaves.

Collation: Title, 1 page; blank, 1 page; Preface, 2 pages; text and Appendix, pages [1]–[76].

1756

A BRIEF/NARRATIVE/OF THE/CASE AND TRIAL/OF/JOHN PETER ZENGER, Printer of the/NEW-YORK WEEKLY-JOURNAL./ [Printer's ornament.] NEW-YORK Printed:/LANCASTER Re-printed, and Sold by W. DUNLAP,/at the *New Printing-Office*, in *Queen-Street*, 1756./

Folio, 20 leaves.

Collation: Title, page [1]; blank, p. [2]; text and Appendix, pages [3]–[40].

1765

THE/TRIAL/OF/JOHN PETER ZENGER,/OF NEW YORK, PRINTER:/Who was charged with having printed and published/a LIBEL against the Government; and acquitted./WITH/A NARRATIVE OF HIS CASE./To which is now added, being never printed before,/THE TRIAL/OF/MR. WILLIAM OWEN,/BOOKSELLER, near TEMPLE-BAR,/Who was also Charged with the Publication of a LIBEL/against the GOVERNMENT; of which he was honour-/ably acquitted by a Jury of Free-born Englishmen,/Citizens of London./[Printer's ornament.]/LONDON:/Printed for J. ALMON, opposite Burlington-House, Piccadilly./MDCCLXV./(Price One Shilling.)/

8vo, 30 leaves.

Collation: Title, page [1]; notice of the new edition, 10 lines, pages [2]; text, page [3]–48; text of trial of Mr. William Owen, 11 pages; publisher's advertisements, 1 page.

1770

A BRIEF/NARRATIVE/OF THE/CASE and TRIAL/OF/JOHN PETER ZENGER,/PRINTER/OF THE/NEW-YORK WEEKLY JOURNAL,/FOR A/LIBEL./In a free State, such as our's is, all Men ought to/enjoy, and express their Minds freely./ TIBERIUS CAESAR./NEW-YORK:/Reprinted, by JOHN HOLT, at the *Exchange*. 1770/

4to, 28 leaves.

Collation: Title, 1 page; blank, 1 page; text and Appendix, pages [1]–46, "Summary Account of the trial of Mr. Willim Owen, Bookseller," pages 47–49; "From the Political Register," etc., pages 50–53; blank, page [54].

1784

THE TRIAL/OF JOHN PETER ZENGER,/OF NEW-YORK, PRINTER;/FOR A LIBEL/AGAINST THE GOVERNMENT,/ON THE FOURTH OF AUGUST,/MDCCXXXV./ INSCRIBED/TO THE HONORABLE T. ERSKINE./"God and Reason made the Law, and have placed Con-/science within you to determine, not like an Asiatic/Cadi, according to the Ebbs and Flows of his own Pas-/sions, but like a British Judge, in this Land of Liberty/and good Sense, who makes *no new Law*, but faithfully/declares that Law which *he knows* already written."/STERNE/LONDON: PRINTED FOR FLEXNEY, HOLBORN; DAVIES, RUSSELL-/STREET; MERRIL, CAMBRIDGE; AND/EDDOWES, SHREWSBURY. 1784./

8vo, 34 leaves.

Title, 1 page; blank, 1 page; dedication, 2 pages; text, pages [1]–64.

1799

[Printer's ornament.]/A/BRIEF NARRATIVE/OF THE/CASE AND TRYAL/OF/*John Peter Zenger*,/Printer of the *New-York Weekly Journal*./[Colophon:]/Reprinted and Sold at the *Bible* and *Heart*, Cornhill, Boston,/MDCCXCIX./

8vo, 24 leaves.

Collation: No separate title-page. Text and Appendix, pages 1–48.

1841

AMERICAN/CRIMINAL TRIALS/By PELEG W.

CHANDLER./VOLUME I./BOSTON:/CHARLES C. LITTLE AND JAMES BROWN./LONDON: / A. MAXWELL, 32, BELL YARD, LINCOLN'S INN./MDCCCXLI./

8vo, 2 volumes.

The "Trial of John Peter Zenger" fills pages [151]–209 of Vol. I.

1741

CARIBBEANA. / CONTAINING / LETTERS and DISSERTATIONS,/ Together with / POETICAL ESSAYS, / On various SUBJECTS and OCCASIONS;/Chiefly wrote by several Hands in the/WEST-INDIES./And some of them to Gentlemen residing there./Now collected together in/TWO VOLUMES./ Wherein are also comprised, divers Papers relating to TRADE,/ GOVERNMENT, and LAWS in general; but more especially,/ to those of the *British* Sugar-Colonies, and of *Barbados* in parti-/ cular: As Likewise the Characters of the most eminent Men that/ have died, of late Years, in that Island./To which are added in an/ APPENDIX,/Some Pieces never before Published./Vol. II./LONDON :/Printed for T. OSBORNE, in *Gray's-Inn*; J. CLARKE, at the *Royal Ex-/change*; S. AUSTIN, in *St. Paul's Church-Yard*; G. HAWKINS, at/*Temple-Bar*; R. DODSLEY, in *Pall-Mall*, and W. LEWIS in *Covent-/Garden*. M.DCC.XLI.

4to, 2 vols.

Vol. II. contains "Remarks on Zenger's Trial," signed "Anglo-Americanus," in five letters, pages 198–221; also "Remarks on Zenger's Trial by another Hand," signed "Indus Britannicus," pages 225–241; "Letters from | Anglo-Americanus | with an article from the Pensilvania Gazette of Dec. 8, 1737," pages 264–271; and "Letter to Anglo-Americanus and Indus-Britannicus," signed "P. C.," pages 272–273.

1816

A/COMPLETE COLLECTION/OF/State Trials/AND/ PROCEEDINGS FOR HIGH TREASON AND OTHER/ CRIMES AND MISDEMEANORS / FROM THE / EARLIEST PERIOD TO THE YEAR 1783,/WITH NOTES AND OTHER ILLUSTRATIONS: / COMPILED BY / T. B. HOWELL, ESQ., F.R.S., F.SA./INCLUDING,/IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE/FOLIO EDITION OF HARGRAVE,/

BIBLIOGRAPHY

UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED: / TO WHICH IS SUBJOINED/A TABLE OF PARALLEL REFERENCE, / RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN/WHICH REFERENCES ARE MADE TO THE FOLIO EDITION./In TWENTY-ONE VOLUMES./VOL. XVII./12 GEORGE I TO 17 GEORGE II 1726–1743./LONDON:/Printed by T. C. Hansard, Peterborough-Court, Fleet-Street: / FOR LONGMAN, HURST, REES, ORME, and BROWN; J. M. RICHARDSON;/BLACK, PARBURY AND ALLEN; BALDWIN, CRADOCK AND JOY;/E. JEFFREY; J. HATCHARD; R. H. EVANS; J. BOOKER; E. LLOYD;/J. BOOTH; BUDD AND CALKIN; AND T. C. HANSARD./1816./

8vo, 21 vols.

Vol. XVIII contains an account of Zenger's trial, filling columns 675 to 764, with the following heading:

"490./The Trial of MR. JOHN PETER ZENGER, of New-York, Printer /for printing and publishing a Libel against the Government,/before the Hon. James de Lancey Esq. Chief Justice of the/Province of New-York, and the Hon. Frederick Phillipse, Esq./second Judge, at New-York, on August 4th. 9 George II,/A.D. 1735."

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EXPLANATION OF ABBREVIATIONS

A.—American Antiquarian Society, Worcester, Mass.
D.—Edward H. DeLancey, New York.
L.—New York Public Library, Lenox Collection.
N.—New York Historical Society.
P.—Historical Society of Pennsylvania.
R.—Public Records Office, London.
W.—John David Wolfe, New York.

Each number, so far as seen, consists of four pages, except where indicated.

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